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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 321

SUN OIL COMPANY, PETITIONER,

vs.

FEDERAL POWER COMMISSION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 18, 1959

CERTIORARI GRANTED NOVEMBER 9, 1959

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 17040

SUN OIL COMPANY, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

PETITION TO REVIEW AND SET ASIDE ORDERS OF THE FEDERAL POWER COMMISSION—Filed January 6, 1958

Martin A. Row, Leo J. Hoffman, P. O. Box 2880, Dallas 21, Texas, Robert E. May, Omar L. Crook, May, Shannon and Morley, 1700 K Street, N. W., Washington 6, D. C., Attorneys for Petitioner.

[fol. 2] To the United States Court of Appeals for the Fifth Circuit and the Honorable Judges Thereof:

Comes now Sun Oil Company (hereinafter called "Petitioner") and respectfully petitions this Honorable Court to review and set aside two orders of the Federal Power Commission (hereinafter called "Commission"), one issued September 12, 1957[1] and the other bearing an issue date of November 8, 1957 by which Petitioner is aggrieved as hereinafter set forth.

Statement of Venue

This petition to review is filed under and pursuant to the provisions of Section 19(b) of the Natural Gas Act

[1] The order issued September 12, 1957 is in the form of a letter dated September 12, 1957 signed by the Acting Secretary of the Commission. The Commission's "Order Denying Motion for Reconsideration" issued November 8, 1957, refers to the action taken by such letter as "Commission's" action.

of June 21, 1938, c. 556 (52 Stat. 831), U.S.C. Title 15, §§717r, which provides in part as follows:

> "(b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit Court of appeals of the United States for any circuit wherein the natural-gas company to which the [fol. 3] order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such Court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part."

Petitioner Sun Oil Company is a corporation organized and existing under the laws of the State of New Jersey, and is authorized to do business in each and all of the states of the United States. The principal place of business of Petitioner's Southwest Division is in the Rio Grande National Building, Dallas Texas. Petitioner is thus located in the Fifth Circuit within the meaning of Section 19(b) of the Natural Gas Act.

The Federal Power Commission is the agency of the United States Government charged with the administration of the Natural Gas Act.

Statement of Proceedings

Petitioner's principal business is in the production, transportation, refining and selling of crude oil. Incidental to its principal business, Petitioner has for many years been engaged, and is now engaged, in the business of producing and gathering natural gas and in selling a part of the gas which it produces to purchasers which are natural gas companies within the meaning of the Natural Gas Act.

Petitioner, being an independent producer and gatherer of natural gas, is within the purview of the definition [fol. 4] contained in the general orders issued by the Commission purporting to prescribe regulations governing the filing of rate schedules and applications for certificates

of public convenience and necessity by independent producers and gatherers of natural gas. The first of the series of such orders by the Commission, Order No. 174, was issued on July 16, 1954. This order was superseded by Order No. 174-A, issued on August 6, 1954. Order No. 174-A was thereafter revised by Order No. 174-B, issued on December 17, 1954. Petitioner has endeavored to make the filings with the Commission required by these orders but has uniformly made such filings only under compulsion of the orders and has specifically reserved its right to contest the jurisdiction of the Commission.

The nature of the proceedings here under review will be briefly summarized.

By transmittal letter dated September 16, 1954, Petitioner transmitted to the Commission for filing, under compulsion of Order No. 174-A, its contract with Southern Natural Gas Company ("Southern Natural") and one amendment thereto, covering the sale of natural gas produced in the Gwinville Gas Field, Jefferson Davis and Simpson Counties, Mississippi. This filing consisted of a contract dated August 26, 1947 and an amendment thereto dated September 10, 1953, and was received by the Commission on November 30, 1954. These documents were designated by the Commission as Sun Oil Company's FPC Gas Rate Schedule No. 55 and Supplement No. 1 thereto. Petitioner was further advised that this rate schedule had been accepted for filing.

[fol. 5] Certain provisions of Petitioner's FPC Gas Rate Schedule No. 55, the effect of which the Commission has ignored, are important to a chronological summary of this proceeding. Article XIV of such rate schedule provided:

"Term

"Subject to the various termination options given the parties hereto by the terms hereof, this agreement shall remain in force and effect for a period of ten (10) years, commencing on the date on which the first delivery of gas is made by Seller to Buyer hereunder."

"Price

Article XI, in part, provided:

"Subject to the provisions of Article VI hereof, providing for a possible adjustment in price, Buyer agrees to pay Seller for all gas purchased hereunder a price

"(1) of seven and one-half cents (7½c) for each one thousand (1,000) cubic feet of gas during the first five (5) years of the term hereof

"(2) of eight cents (8c) for each one thousand (1,000) cubic feet of gas during the second five (5) years of said term.

"In this connection, it is understood that by this agreement Seller is not dedicating to Buyer, or to Buyer's market outlet, any portion of Seller's gas [fol. 6] reserves in the Gwinville Gas Field or any portion of the gas produced by Seller from its wells in said field, but that Seller is simply selling and Buyer is purchasing the quantity of gas called for in this agreement on the terms specified in this agreement and for the price set out above; * * *."

At the time Petitioner submitted its FPC Gas Rate Schedule No. 55 for filing, Petitioner also submitted for filing an Application for a Disclaimer of Jurisdiction or, in the Alternative, an Application for Certificate of Public Convenience and Necessity applicable to the gas then being delivered pursuant to its contract dated August 26, 1947, with Southern Natural Gas Company. Such application, in the alternative, specifically recited: "This application is hereby made only for a certificate of public convenience and necessity authorizing the sale of natural gas in the circumstances above described." Such application was docketed by the Commission and assigned Docket No. G-6658. Pursuant to due notice, a public hearing was held on such application in conjunction with other applications on May 21, 1956. By an order dated May 28, 1956, the Commission issued Petitioner a certificate of public convenience and necessity. In issuing such certificate, the Commission ordered that:

"(A) A certificate of public convenience and necessity be and is hereby issued, upon the terms and conditions of

this order, authorizing the sale by Applicant of natural gas in interstate commerce for resale, together with the operation of any facilities, subject to the jurisdiction of the Commission, used for the sale of natural gas in interstate commerce, as hereinbefore described and as more fully [fol. 7] described in the application and exhibits in this proceeding." It is thus apparent that Petitioner, in the alternative, applied for, and was granted, a certificate applicable to a sale which terminated under the specific terms of the contract quoted above ten years from the date on which the first delivery of gas was made, to-wit, September 3, 1947.

As such contract of August 26, 1947 terminated on September 3, 1957, Petitioner entered into an entirely new contract with Southern Natural applicable to sales of gas from the Gwinville Field, Jefferson Davis County, Mississippi as of August 1, 1957, for a term of twenty years from and after September 3, 1957.

By transmittal letter dated August 12, 1957, received August 13, 1957, Petitioner submitted, pursuant to the requirements of Section 154.92(b) of the Commission's regulations, as amended by Order No. 174-B, three copies of the contract between Petitioner and Southern Natural dated August 1, 1957 as a new rate schedule. On the same date, August 13, 1957, Petitioner filed with the Commission an Application for a Disclaimer of Jurisdiction or, in the Alternative, an Application for Certificate of Public Convenience and Necessity, applicable to the sale covered by such contract dated August 1, 1957. The Commission's acknowledgment card set forth that such application had been docketed and Docket No. G-13059 had been assigned thereto.

By a letter order issued September 12, 1957, which is the first order sought to be reviewed by this petition, the Commission rejected Petitioner's Application for Disclaimer of Jurisdiction or, in the Alternative, an Application for [fol. 8] a Certificate of Public Convenience and Necessity. By such letter order the Commission also rejected Petitioner's rate filing consisting of its contract dated as of August 1, 1957, without prejudice to refiling such contract as a "change" to its FPC Gas Rate Schedule No. 55. A

true and correct copy of such letter order of September 12, 1957 is attached to this Petition as Exhibit "A" and made a part hereof.

With respect to the rejection of Petitioner's alternative certificate application, the letter order issued September 12, 1957, specifically recited:

> "Such previously issued certificate [in Docket No. G-6658] is still applicable to the gas sales from the acreage even though the term of the gas sales contract dated August 26, 1947 * * * has expired. In view of such duplication, your application for a certificate of public convenience and necessity in Docket No. G-13059 is hereby rejected."

With respect to the rejection of Petitioner's rate schedule filing consisting of the contract dated August 1, 1957, the Commission set forth in such letter order of September 12, 1957:

> "In regards to your tender of a NEW CONTRACT dated August 1, 1957 as the rate schedule covering the sale from certain units in the Gwinville Field to Southern Natural, such proposed rate schedule duplicates sales from units covered by your existing FPC Gas Rate Schedule No. 55 and such proposed rate schedule embodies a change in the effective rate for gas sales from such units." (Emphasis added.)

[fol. 9] As it is apparent from the foregoing recitation of the filings made by Petitioner pursuant to the contract dated August 26, 1947, such contract as a rate filing or the certificate issued to Petitioner in Docket No. G-6658 did not in any way relate to or cover the sales contemplated by the contract dated August 1, 1957. Moreover, the later contract was not in existence at the time the Commission issued a certificate in Docket No. G-6658 on May 28, 1956 and could not therefore be involved with the sale contemplated in that docket or the rate schedule filing designated Petitioner's FPC Gas Rate Schedule No. 55.

On October 10, 1957 Petitioner filed a timely application for rehearing of the order issued September 12, 1957.

This application for rehearing was filed pursuant to the provisions of Section 19(a) of the Natural Gas Act and Section 1.34 of the Commission's Rules and Regulations.

On the same date, October 10, 1957, Petitioner filed "under protest and under the compulsion of the letter order of September 12, 1957," and "without admitting the validity of said order and without prejudice to the rights of Sun Oil Company to contest the validity of said order," the contract dated August 1, 1957, together with other documents, in accordance with Section 154.94 of the Commission's Rules and Regulations, as a change in Petitioner's FPC Gas Rate Schedule No. 55, in order that Petitioner would not be further penalized by the erroneous order of the Commission dated September 12, 1957.

By an order issued November 8, 1957 in Docket No. G-13059, the Commission "accepted and considered" the [fol. 10] application for rehearing filed October 10, 1957 as a "motion for reconsideration" and denied the "petition for reconsideration." In a footnote "1" to such order the Commission recited that an application for rehearing may not be filed under Section 1.30(e) of the Commission's rules.[2] Such section provides:

> "No application for rehearing, provided for by the statute under which a proceeding is initiated and conducted, will be entertained by the Commission until a decision is issued and becomes final under the provisions of this section."

No action on an application or a rate schedule filing can be more final than its rejection which is the action taken by the Commission's order of September 12, 1957. Such order stated that the rejection was based upon the fact that:

---

[2] The Commission's order refers to a "petition for reconsideration," although the filing was captioned "Application for Rehearing." It also recited such "petition" was directed to the Commission's action by letter of September 13, 1957 rejecting Sun's application for a certificate and rate schedule filing of May 3, 1957. The letter Petitioner received is stamped "Sep. 12, 1957." The May 3, 1957 filing date is obviously erroneous.

"* * * a previously issued certificate, in Docket No. G-6658, is still applicable to gas sales from the same gas producing acreage in Gwinville Field to the same buyer, Southern Natural, and that an existing effective rate schedule, Sun's FPC Gas Rate Schedule No. 55, and supplements thereto, cover the continued serv-
[fol. 11] ice from that acreage even though the contract permitted to be filed as such rate schedule contains a termination date of September 2, 1957."

By an order also bearing the issue date of November 8, 1957 in Docket No. G-13664, which is the second order sought to be reviewed by this petition, the Commission designated the new contract of August 1, 1957, and a statement submitted therewith as required by Section 154.94, which were filed under protest as set forth above, as Supplements Nos. 3 and 4 to Petitioner's FPC Gas Rate Schedule No. 55, and suspended the effectiveness thereof until April 10, 1958, and ordered a hearing, pursuant to the authority of the Natural Gas Act, particularly Section 4 and 15 thereof, with respect to the "increased rates and charges."[3] A copy of such order of November 8, 1957, is attached hereto as Exhibit "B" and made a part hereof.

On December 2, 1957, Petitioner filed an Application for Rehearing, pursuant to Section 19(a) of the Natural Gas Act and Section 1.34 of the Commission's Rules, with respect to the order issued November 8, 1957, in Docket No. G-13664. By letter order dated December 10, 1957 the Secretary of the Commission "rejected" such application for rehearing filed December 2, 1957. Such letter invited Petitioner's attention to Section 1.30(e) of the Commission's rules, quoted above, and stated "your application is not addressed to a final order within the meaning of the rules and is, therefore, not acceptable for filing."

[fol. 12] On December 6, 1957, the Commission issued an "Errata Notice" with respect to the "Order Denying Motion for Reconsideration" in Docket No. G-13059. Such "Errata

[3] Supplement No. 2 which became effective April 28, 1955 involved an increase in gas severance tax levied by the State of Mississippi.

Notice" changed the reference to Petitioner's contract with Southern Natural dated August 1, 1957 accepted for filing as a change in Petitioner's FPC Gas Rate Schedule No. 55, from " 'Supplements Nos. 3 and 4 to Sun's FPC Gas Rate Schedule No. 55' " to " 'Sun's FPC Gas Rate Schedule No. 87 and Supplement No. 1 thereto.' " Similarly, by an Errata Notice dated December 6, 1957 with respect to the Order for Hearing and Suspending Proposed Changes in Rates, in Docket No. G-13664, the Commission changed the reference to " 'Supplements Nos. 3 and 4 to Sun's FPC Gas Rate Schedule No. 55' " to " 'Sun's FPC Gas Rate Schedule No. 87 and Supplement No. 1 thereto.' "

As the Commission's order issued September 12, 1957 set forth that the contract dated August 26, 1947 "has expired" and the Errata Notice assigns a new rate schedule number to such contract, it is apparent that the Commission recognized that the contract dated August 1, 1957, did not in any way purport to alter, amend, extend or in any manner modify or relate to the contract dated August 26, 1947.

Points Relied Upon

In this petition to review Petitioner relies upon the points hereinafter set forth, all of which were urged in the application for rehearing.

I.

[fol. 13] The Commission's order issued September 12, 1957 is unlawful for the reason that the Commission is without authority to reject Petitioner's application for a certificate of public convenience and necessity filed August 13, 1957.

As set forth in the Statement of the Proceedings, Petitioner's application for a certificate of public convenience and necessity was only applicable to the sale covered by the contract dated August 26, 1947, and the certificate of public convenience and necessity issued May 28, 1956 in Docket No. G-6658 pursuant thereto was for the sale of natural gas "as more fully described in the application and exhibits" in that proceeding. As also set forth above, the

contract dated August 26, 1947 specifically provided that "* * * Seller [Petitioner] is simply selling and Buyer is purchasing the quantity of gas called for in this agreement * * *." The Commission has authority to grant certificates of limited duration as decided by the United States Court of Appeals for the Third Circuit in *Sunray Mid-Continent Oil Company* v. *Federal Power Commission*, 239 F. 2d 97. The Supreme Court affirmed this authority of the Commission in a *Per Curiam* opinion of April 29, 1957 (25 LW 3317), wherein it is stated:

> "Per Curiam: The power of the Court of Appeals in reviewing the order of the Federal Power Commission was exhausted when it held that the Commission had authority under Sec. 7(c) and (e) of the Natural Gas Act to issue certificates of public convenience and necessity of limited duration. * * *"

[fol. 14] Under these circumstances it is clear that the certificate issued May 28, 1956 did not cover the new sale to Southern Natural, the terms of which are set forth in the contract dated August 1, 1957.

The application filed August 13, 1957 conformed to all the formal requirements of the Natural Gas Act and the Commission's Regulations. Under Section 7(c) of the Act Petitioner's contract of August 1, 1957 is a contract by which Petitioner proposes to ENGAGE in a sale of gas for which a certificate is both permitted and required. Such sale is separate and distinct from any other sale, and is not a continuation of another sale. Moreover, with respect to such sale Petitioner meets all of the qualifications imposed by Section 7(e) of the Act. Under Section 157.23(b) of the Commission's Regulations implementing the foregoing provisions of the Natural Gas Act the sale of gas covered by Petitioner's contract of August 1, 1957, is a "new" sale for which a certificate again is both permitted and required. Therefore, the Commission's purported rejection of Petitioner's application for a certificate is contrary to both the Natural Gas Act and the Commission's own Regulations.

The Commission's order purporting to reject Petitioner's application for certificate is unlawful for the reason that such purported action was taken without according to Petitioner a hearing on its application for certificate pursuant to the mandatory requirements of Section 7(c) of the Natural Gas Act. Such section requires that in all certificate cases "the Commission SHALL set the matter for [fol. 15] hearing."[1] The mandatory character of this requirement of a hearing on all certificate applications was recognized and enforced in *Northeastern Gas Transmission Company* v. *Federal Power Commission*, 195 F. 2d 872, 880 (3rd Cir. 1952), cert. denied, 344 U.S. 818, where the Court held that the natural-gas company was entitled to a hearing on its certificate application "as a matter of right."

Even if it were assumed *arguendo* that the certificate issued May 28, 1956 was not of limited duration, Petitioner's rate filing received by the Commission on November 30, 1954 expired on September 3, 1957 and the new contract with Southern Natural dated August 1, 1957 became Petitioner's initial rate schedule as discussed hereinafter under Points II to VII, both inclusive.

II.

The letter order of September 12, 1957, rejecting Petitioner's rate schedule filing is unlawful as Petitioner is permitted and required to file the contract dated August 1, 1957, as its initial rate schedule.

Petitioner's contract of August 26, 1947, with Southern Natural, which is on file with the Commission as Petitioner's FPC Gas Rate Schedule No. 55, expired and terminated by its own terms at the expiration of the stipulated term of the contract on September 3, 1957. As set forth above, the Commission recognized that such contract had expired. Petitioner's contract of August 1, 1957, with Southern Natural, which the Commission has purported to reject as a rate schedule, covers an entirely [fol. 16] distinct and separate sale of gas to Southern

[1] All emphasis is supplied in this petition unless otherwise indicated.

Natural. Petitioner is, therefore, entitled to file such contract of August 1, 1957, as an initial rate schedule under the provisions of Section 4(c) of the Natural Gas Act and Section 154.92(b) of the Commission's Regulations. Since Petitioner's rate schedule filing clearly falls within the scope of those provisions as an initial rate schedule, the Commission is without authority, either under the statute or under its own regulations, to reject such initial filing.

Section 4(c) of the Act provides that, " * * * every natural gas company shall file with the Commission, * * * and shall keep open in convenient form and place for public inspection, SCHEDULES SHOWING ALL RATES AND CHARGES FOR ANY transportation or SALE subject to the jurisdiction of the Commission, * * *." Under Section 154.92(b) of the Commission's Regulations, "Every independent producer who, * * * proposes to INITIATE an interstate transportation or SALE of natural gas subject to the jurisdiction of the Commission to an EXISTING or new CUSTOMER shall file with the Commission not less than 30 days nor more than 90 days prior to the date such transportation or sale is proposed to be INITIATED a rate schedule, as defined in Section 154.93 hereof, setting forth the terms and conditions of service and all rates and charges for such transportation or sale * * *."

Within the meaning of these provisions Petitioner's contract of August 1, 1957, accomplishes a SALE of natural gas and such sale is entirely separate and distinct from any other sale. Even the Commission's Regulations recognize that such a separate and distinct sale may be made to [fol. 17] an EXISTING customer without losing its identity as a separate and distinct sale. Hence, Petitioner is entitled, and even required, by the statute and the regulations to file an initial rate schedule covering such sale. Petitioner's contract of August 1, 1957, constitutes its rate schedule for the sale under the provisions of both Section 4(c) of the Natural Gas Act and Section 154.93 of the Commission's Regulations. Hence, Petitioner's filing of its contract of August 1, 1957, as its initial rate schedule for the sale covered thereby met all formal requirements of

the statute and the regulations and the Commission was without authority to reject the filing.

III.

The order issued September 12, 1957 in Docket No. G-13059 and the order bearing an issue date of November 8, 1957 in Docket No. G-13664 which purports to reject the contract dated August 1, 1957 as an initial rate schedule, to find such contract constituted a change in Petitioner's FPC Gas Rate Schedule No. 55, to compel Petitioner to file such contract of August 1, 1957 as a so-called "change" in such rate schedule to avoid further penalties and to suspend the effectiveness thereof are erroneous and unlawful for the following reasons:

The contract of August 26, 1947, filed and designated as Petitioner's FPC Gas Rate Schedule No. 55, expired and terminated by its own terms. It no longer exists as the basis for any change. The contract of August 1, 1957, purportedly rejected by the Commission, is in no sense a "change" in the earlier contract or in the prices or terms set out therein or in the sale of that date to Southern [fol. 18] Natural. Rather, the contract of August 1, 1957 is a separate and distinct contract covering an entirely separate and distinct sale. There is no relationship between the two contracts which can properly be made the basis for any theory that the later contract is a "change" in the earlier contract or that the later contract "supersedes" the earlier contract, nor does the sale accomplished by the later contract "duplicate" the sale accomplished by the earlier contract under any valid theory.

Petitioner's contract of August 1, 1957 can not validly be treated as a "change" in rate or rate schedule within the meaning of Sections 4(d) and (e) of the Natural Gas Act. Therefore, the Commission's order of September 12, 1957 unlawfully required that such contract be submitted, if at all, "in accordance with Section 154.94 of the Commission's Regulations, Changes in Rate Schedules."

Even under the Commission's Regulations, Petitioner's contract of August 1, 1957 is not a "change" in the earlier contract with Southern Natural which had been filed and

designated as Petitioner's FPC Gas Rate Schedule No. 55, nor is it a "change" in such rate schedule. Under Section 154.93 of the Regulations, Petitioner's Rate Schedule No. 55 consisted exclusively of the "basic contract" of August 26, 1947 "and all supplements or agreements amendatory thereof." Such basic contract has not been supplemented or amended since the initial filing thereof with the Commission by Petitioner as a rate schedule, and such basic contract came to a complete end by its own terms as of September 3, 1957. Petitioner does not seek to make any [fol. 19] supplement or amendment to such contract or to the rate schedule which consists of such contract, or to change the rate contained therein, but only to make effective an entirely separate and distinct sale of gas under an entirely separate and distinct contract. Section 154.94 of the Commission's Regulations is not applicable to such a state of facts where there is no proposal to change an existing rate or rate schedule covering an existing sale. If such section of the Regulations be construed by the Commission as applicable to such facts, then such section of the Regulations is in conflict with Section 4 of the Natural Gas Act and is necessarily void.

It is clear from the Natural Gas Act that the Commission's power to apply the provisions of Sections 4(d) and (e) thereof is limited exclusively to a "change" in rates and does not extend to the "initial filing" thereof, as is the case here. The only provisions in the Act for action by the Commission with respect to rates and charges filed initially by a natural-gas company are to be found in Section 5 of the Act, which action can only be taken after hearing and on the basis of proper findings.

The order of suspension in Docket No. G-13664 is invalid for the further reason that, even assuming, *arguendo*, the Commission had authority to suspend, the order fails to contain a "statement in writing of its [the Commission's] reasons for such suspension" as required by Section 4(e) of the Natural Gas Act.

[fol. 20] Further assuming, *arguendo*, the Commission's authority to suspend, the suspension order in Docket No. G-13664 is invalid because it was not issued until more than 30 days had elapsed after the date of filing, and

was thus in contravention of Section 4(d) of the Natural Gas Act. Although the Commission addressed a telegram to Petitioner on November 8, 1957, advising of its action, the order itself was not released until November 13, 1957, which was beyond the statutory period of 30 days. The telegraphic advice to Petitioner constitutes insufficient compliance with the statute.

IV.

The Commission's letter order of September 12, 1957 and the order bearing an issue date of November 8, 1957, are invalid also because they are in conflict with the decisions of the Supreme Court of the United States in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

Petitioner's contract of August 1, 1957, does not constitute a modification or amendment newly changing a previously filed rate schedule. As was made plain by the Supreme Court in the *Mobile* case, the basic scheme of the Natural Gas Act is to permit rates to be determined in the first instance by natural-gas companies, by contract or otherwise the initial rate-setting powers are with the natural-gas companies. Under the Court's analysis of the Act, Petitioner's contract of August 1, 1957, constitutes an exercise by Petitioner of its INITIAL RATE-SET-[fol. 21] TING POWER and the Commission is without authority to treat the contract as a "change" within the meaning of Section 4 of the Act.

In this proceeding the contract comprising the previously filed rate schedule has terminated and expired by its own terms. The ONLY rate established by agreement of the parties from and after September 3, 1957, is the price set out in the contract of August 1, 1957. Hence by issuing the order purporting to reject the rate schedule filing the Commission has done what the Supreme Court said it has no power to do in the *Mobile* case. It has usurped the right reserved to natural-gas companies by the Act to establish their rates initially. This is so because the price which the Commission purports to continue in effect, in

the absence of a "change" filed and permitted to become effective under Section 4 of the Act, can not be rested upon any contract between the companies involved. The contract which gave rise to such price initially has terminated and expired by its own terms. A separate and distinct sale and purchase of gas has been made by the parties under the contract of August 1, 1957, and the Commission may not lawfully refuse to permit Petitioner to file such contract as its initial rate schedule.

V.

The Commission's order of September 12, 1957 and the order bearing an issue date of November 8, 1957 purporting to reject the contract between Petitioner and Southern Natural is in contravention of Section 5 of the Natural Gas Act.

[fol. 22] By such orders of September 12, 1957 and November 8, 1957, the Commission purports to extend the term of the contract dated August 26, 1947, and to modify the price provisions of the contract dated August 1, 1957.

Under Section 5 of the Natural Gas Act, the Commission is required to accord Petitioner notice and hearing and is required to make the requisite finding before making any modification of an initial rate schedule. *Michigan Consolidated Gas Company* v. *Panhandle Eastern Pipe Line Company*, 226 F. 2d 60, 66, cert. denied 350 U.S. 987; *United Gas Pipe Line Company* v. *Mobile Gas Service Corporation*, 350 U.S. 332, 341.

VI.

The Commission's order of September 12, 1957 unlawfully rejects Petitioner's rate schedule filing.

Under Sections 4 and 5 of the Natural Gas Act, prescribing the procedure to be followed by the Commission with respect to rate schedule filings, the Commission is not authorized to reject a rate schedule filing meeting all formal requirements. That the Commission lacks statutory power to reject a gas rate schedule filing was authoritatively determined by the United States Court of Appeals for the Third Circuit in *Mississippi River Fuel Corp.* v. *Federal*

Power Commission, 202 F. 2d 899, 902 (1953), where an order of the Commission purporting to "reject" a tariff schedule filing was set aside.

[fol. 23] VII.

The Commission's order of September 12, 1957 and the order bearing the issue date of November 8, 1957 unlawfully deprive Petitioner of its contractual and property rights without due process of law.

The Commission's orders are unlawful for the reason that the Commission failed to give notice to Petitioner and failed to accord Petitioner an opportunity for hearing, contrary to the Natural Gas Act, the Administrative Procedure Act, and the due process clause of the Fifth Amendment to the Constitution of the United States.

The Commission's orders are unlawful for the reason that the orders lack adequate and proper findings of fact and conclusions of law in support of the Commission's ultimate conclusions therein, contrary to the Natural Gas Act (particularly Sections 4, 5 and 7 thereof), the Administrative Procedure Act (particularly Section 8(b) thereof), and the Fifth Amendment to the Constitution of the United States. The Commission's ultimate conclusions set out in the orders are plainly not related by the Commission, by adequate findings, to the requirements of the Natural Gas Act with respect to rate schedule filings and certificate applications, as such requirements are discussed above in this petition to review. Moreover, the orders of the Commission are not supported by substantial evidence and are, therefore, unlawful. This deficiency is particularly glaring with regard to the Commission's findings in the order of September 12, 1957 that "such proposed rate schedule duplicates sales from units covered by your existing FPC Gas Rate Schedule No. 55" [fol. 24] and that "such proposed rate schedule embodies a change in the effective rate for gas sales from such units."

For all the foregoing reasons Petitioner is aggrieved by the order of the Commission issued September 12, 1957 and the order bearing an issue date of November 8, 1957.

Prayer

Wherefore, Petitioner prays:

1. That a copy of this petition be served upon a member of Respondent, Federal Power Commission, in accordance with Section 19(b) of the Natural Gas Act.

2. That the Respondent, Federal Power Commission, be required, in conformity with said Section 19(b) of the Natural Gas Act, to certify and file with this Court the record upon which the orders here sought to be reviewed were entered.

3. That this Court review, and upon review, set aside the order issued September 12, 1957 and the order bearing the issue date November 8, 1957.

[fol. 25] 4. That this Court grant to Petitioner such other and further relief in the premises as the rights and equities of the cause may require.

Respectfully submitted,

Martin A. Row, Leo J. Hoffman, P. O. Box 2880, Dallas 21, Texas, Robert E. May, Omar L. Crook, May, Shannon and Morley, 1700 K Street, N. W., Washington 6, D. C., Attorneys for Petitioner, By Robert E. May.

Verification

Duly sworn to by Robert E. May, jurat omitted in printing.

[fol. 26] Notes Re Exhibits "A" and "B"

Exhibit "A"—Letter, Michael J. Farrell, Acting Secretary to Sun Oil Company, dated 9/12/57;

Exhibit "B"—Order for Hearing and Suspending Proposed Changes in Rates, Issued 11/18/57;

Commissioner Digby, Dissenting;

Omitted—hereafter copied at folios 174 & 192, printed pages 123 & 136.

. . . . . .

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Title omitted]

ORDER TO FILE PETITION FOR REVIEW, ETC.—
Filed January 6, 1958

A petition for review of orders of the Federal Power Commission issued on Sept. 12, 1957 and Nov. 8, 1957 in Docket Nos. G-13059 and G-13664 having been presented to this Court:

It is Ordered that said petition be filed and docketed as of January 6, 1958;

And it is further ordered that a copy of this Order and said Petition be forthwith served upon the Federal Power [fol. 27] Commission, and that said Federal Power Commission, upon service of such copies, forthwith certify and file in this Court a transcript of the record in the proceeding in conformity to Rule 38, as amended, of this Court.

Edward W. Wadsworth, Clerk of the United States Court of Appeals for the Fifth Circuit.

New Orleans, Louisiana, January 6, 1958.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Nos. 17040, 17049, 17128 and 17136

SUN OIL COMPANY, S. W. RICHARDSON, HUMBLE OIL & REFINING COMPANY, MAGNOLIA PETROLEUM COMPANY, Petitioners,

v.

FEDERAL POWER COMMISSION, Respondent.

ORDER DENYING MOTION TO CONSOLIDATE—
Filed April 28, 1958

On Consideration of the motion filed by respondent to consolidate the above entitled and numbered causes for hearing, to fix dates for filing briefs before the records are printed, to provide the mode of citation to the records in the briefs, and to provide for printing of parts of the [fol. 28] records as a single joint appendix following the dates fixed for filing the briefs; and of the answers and objections of petitioners thereto,

It is Ordered that said motion be, and it is hereby, denied;

It is Further Ordered that the Federal Power Commission file in this Court in each of the above entitled causes, a certified transcript of the proceedings before said Commission within thirty (30) days from the date of this Order, so that said proceedings may be printed by each petitioner, in accordance with Rules 38 and 39 of this Court, as amended. All subsequent proceedings in this Court will be in accordance with the Rules of this Court.

John Minor Wisdom, U. S. Circuit Judge.

April 28, 1958, New Orleans, La.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17,040

SUN OIL COMPANY, Petitioner,

v.

FEDERAL POWER COMMISSION, Respondent.

CERTIFICATE OF TRANSCRIPT OF THE RECORD—
Filed February 15, 1958

Pursuant to the provisions of Section 19 (b) of the Natural Gas Act (15 U.S.C. § 717r (b)) and Paragraph 1 of Rule 38 of this Court, as amended May 20, 1955, [fol. 29] the Federal Power Commission hereby certifies that the documents and other material listed and described below constitute the complete record upon which the letter order dated September 12, 1957, in a proceeding before the Commission entitled *In the Matter of Sun Oil Company,* Docket No. G-3059, and the Commission's order issued November 8, 1957, in a proceeding before the Commission entitled *In the Matter of Sun Oil Company,* Docket No. G-13664, complained of in the petition in the above-entitled proceeding, were entered.

Description of Document	
Letter, dated September 16, 1954, from Sun Oil Company to Secretary transmitting the former's FPC Gas Rate Schedule No. 55 and Supple. No. 1 thereto, received November 30, 1954	24
Application of Sun Oil Company for a disclaimer of jurisdiction or, in the alternative, an application for certificate of public convenience and necessity, Docket No. G-6658, filed November 30, 1954.	
Page 1	26
Exhibit B	31

Sun Oil Company's FPC Gas Rate Schedule No. 55, together with Supplements thereto, filed November 30, 1954.
Page 1 32
Supple. No. 1, p. 1 52
Gas Statements, sh. 1 54
Gas & Distillate Statement 55
Supple. No. 2, filed 4/28/55, page 1 56
Statement 58
[fol. 30]
State. of Reasons,
page. 1 60
Page 2 60
Sun Oil Company's FPC Gas Rate Schedule No. 87 and Supple. No. 1 thereto, filed October 10, 1957.
Cover 61
"Index" 61
Page 1 62
Exhibit A 85
Supple. No. 1, p. 1 87
Statement 90
State. of Reasons 92
Letter, dated March 23, 1955, from Secretary to W. E. Warren advising that Sun Oil Company's FPC Gas Rate Schedule No. 55 and Supple. No. 1 thereto have been accepted for filing.
Page 1 93
Letter, dated June 6, 1955, from Secretary to Sun Oil Company advising the latter that Supple. No. 2 to its FPC Gas Rate Schedule No. 55 has been accepted for filing 95
Letter, dated June 28, 1955, from Sun Oil Company to Secretary modifying statement in support, Supple. No. 2 to Sun's FPC Gas Rate Schedule No. 55, received July 5, 1955 97
Findings and order issuing certificates of public convenience and necessity, Docket No. G-3275, *et al.*, Docket No. G-6658, issued May 28, 1956.
Page 1 99
Commissioner Digby, concurring 110

[fol. 31]
Letter, dated August 12, 1957, from Sun Oil Company to Secretary transmitting Sun's FPC Gas Rate Schedule No. 87, received August 13, 1957.
Page 1 113
Application of Sun Oil Company for a disclaimer of jurisdiction or, in the alternative, an application for certificate of public convenience and necessity, Docket No. G-13059, filed August 13, 1957.
Page 1 115
Exhibit A 121
Letter, dated August 16, 1957, from Sun Oil Company to Secretary correcting Sun's letter dated August 12, 1957 122
Letter, dated September 12, 1957, from Acting Secretary to Sun Oil Company rejecting and returning rate schedule and application for certificate of public convenience and necessity.
Page 1 123
Application of Sun Oil Company for rehearing, Docket No. G-13059, filed October 10, 1957.
Page 1 124
Order denying motion for reconsideration, Docket No. G-13059, issued 11/8/57.
Page 1 133
Commissioner Digby, dissenting 134
Errata Notice, dated December 6, 1957 135
Order for hearing and suspending proposed changes in rates, Docket No. G-13664, issued November 8, 1957.
Page 1 136
Commissioner Digby, dissenting 138
Errata Notice, dated December 6, 1957 138
[fol. 32]
Letter, dated November 13, 1957, from Secretary to Sun Oil Company transmitting orders issued in Docket Nos. G-13059 and G-13664 139
Application of Sun Oil Company for rehearing, Docket No. G-13664, filed December 2, 1957.
Page 1 140

Letter, dated December 10, 1957, from Secretary to Robert E. May rejecting and returning Sun Oil Company's application for rehearing, Docket No. 13664 145

By the Commission.

In witness whereof I have hereunto subscribed my name and caused the seal of the Federal Power Commission to be affixed this 14th day of February, 1958, at Washington, D.C.

J. H. Gutride, Secretary.

[fol. 33]

BEFORE THE FEDERAL POWER COMMISSION

Received Nov. 30, 1954.

Sun Oil Company

Southwest Division
Rio Grande National Building
Dallas 2, Texas

S. M. Gladney
Manager
T. F. Hill
Assistant Manager

A. S. Rhea
Supt. Operating Dept.

September 16, 1954.

Leon M. Fuquay, Secretary
Federal Power Commission
Washington 25, D. C.

Dear Sir:

Pursuant to the requirements of Section 154.92 of the Commission's regulations, as amended by Order No. 174-A issued in Docket No. R-138 on August 6, 1954, there are transmitted herewith for filing as a rate schedule two

copies of the contract and all amendments and supplements thereto between Sun Oil Company (Southwest Division) and the purchaser of gas named below, which contract was in effect on June 7, 1954.

Purchaser: Southern Natural Gas Company.

Date of Contract and Amendments: Contract dated August 26, 1947, Agreement dated September 10, 1953. [fol. 34] Such contract and amendments contain the terms and conditions of service and all rates and charges for the sales made thereunder. Sun Oil Company has no knowledge with respect to the ultimate point of consumption of the gas sold under such contract.

There are also enclosed two copies of a recent bill, under the above-listed contract, showing how the billing amount is determined.

With regard to this filing, address communications to: James E. Pew, Mgr., Natural Gas Dept., 1608 Walnut St., Philadelphia 3, Pa.; and B. E. Warren, P. O. Box 2880, Dallas, Texas.

This filing is made under compulsion of the Commission's Order No. 174-A without admitting the validity of such order and without admitting that the Federal Power Commission has jurisdiction over either Sun Oil Company or the subject matter of this filing, and without prejudice to the rights of Sun Oil Company to contest the validity of said order, and without prejudice to its right to contest the jurisdiction of the Commission over the subject matter of this filing.

Yours very truly,

SUN OIL COMPANY (SOUTHWEST DIVISION),

By (Illegible),
Superintendent, Natural Gas Department.

[fol. 35]

BEFORE THE FEDERAL POWER COMMISSION

APPLICATION FOR A DISCLAIMER OF JURISDICTION OR, IN THE ALTERNATIVE, AN APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY—

Received November 30, 1954

100-2 Formal

Docket No. G-6658

In the Matter of

SUN OIL COMPANY (Southwest Division).

Sun Oil Company (Southwest Division), hereinafter referred to as "Sun", hereby applies for an Order of the Commission disclaiming jurisdiction over the facilities and sales of natural gas hereinafter described, or, in the alternative, without waiving its position that its facilities and sales of natural gas are not subject to the Commission's jurisdiction, Sun hereby applies for a certificate of public convenience and necessity, pursuant to the Commission's Order No. 174-A, to authorize the continued sales by Sun of its gas.

I.

In support of this application, Sun, for a Disclaimer of Jurisdiction, respectfully shows:

[fol. 36] Sun is a corporation organized under the laws of the State of New Jersey. Its principal business is the production, transportation, refining, and selling of crude oil, and the marketing of refined products recovered from crude oil. Incidental to its principal business, it has for many years been engaged, and is now engaged in the business of producing and gathering natural gas, and selling a part of the gas which it produces to purchasers which are natural-gas companies within the meaning of

the Natural Gas Act. The gas which Sun sells to natural-gas companies is being sold and delivered from facilities which are not under the Commission's jurisdiction, and is being sold under the contracts executed during the period of time when the Commission was construing the Natural Gas Act as not being applicable to sales of gas by independent producers and gatherers to natural-gas companies transporting such gas in interstate commerce, and Sun does not own or operate facilities which are under the jurisdiction of the Commission. Consequently, Sun is engaged solely in the production and gathering of natural gas within the meaning of Section 1 (b) of the Natural Gas Act and is not a "natural-gas company" as defined in the Act.

This application is filed under compulsion of the Commission's Order No. 174-A issued in Docket No. R-138 on August 6, 1954. Sun does not admit the validity of such order but on the contrary contests the validity of such order and denies the Commission's jurisdiction over either Sun or its facilities or its sales or any of its operations. This application is filed without prejudice to Sun's right to contest the validity of the aforesaid order and [fol. 37] without prejudice to its right to contest the jurisdiction of the Commission over Sun and the subject of this Application.

It is therefore respectfully submitted that the Commission should issue an order disclaiming jurisdiction as herein requested.

II.

Without waiving its position that Sun's facilities, sales, and operations are not subject to the Commission's jurisdiction, Sun, in support of its request that a certificate of public convenience and necessity be issued to authorize the continuance of its sales, respectfully shows:

(1) The exact legal name of the applicant is Sun Oil Company. It is a corporation organized and existing under the laws of the State of New Jersey. The location of Sun's principal place of business is Philadelphia, Pa.

It is authorized to do business in each and all of the United States.

(2) Sun has no knowledge of any predecessor interest bona fide engaged in the transportation or sale of natural gas subject to the jurisdiction of the Commission on June 7, 1954.

(3) The names, titles and post office addresses of the persons to whom correspondence or communications in regard to this application should be addressed are: James E. Pew, Mgr., Natural Gas Dept., 1608 Walnut St., Philadelphia, Pa.; and B. E. Warren, P. O. Box 2880, Dallas, Texas.

[fol. 38] (4) As stated above, Sun denies that it is a natural gas company and denies that it was, on June 7, 1954, engaged in either the transportation of natural gas in interstate commerce or the sale of natural gas in interstate commerce for resale. Sun was, on June 7, 1954, and now is, delivering gas subject to the contract with the following Purchaser: Southern Natural Gas Company, which contract has either been heretofore filed, or is being filed contemporaneously herewith, as a rate schedule.

(i) The source of gas produced by applicant is:

(a) Approximate location of fields: Gwinville Field, N ½ of Jefferson Davis County, Mississippi.

(b) Point of delivery: Same as (a) above.

(ii) Sun is not engaged in the transportation of natural gas in interstate commerce and does not own any pipe line so transporting natural gas and subject to the jurisdiction of the Commission. The gas being delivered by Sun to said Purchaser is being transported by such Purchaser but Sun does not have knowledge of the detailed route or routes through which such Purchaser transports such gas.

(iii) Sun did not, on June 7, 1954, and does not now propose to, serve any communities either at wholesale or at retail.

(iv) Sun did not, on June 7, 1954, and does not now propose to, deliver any gas to any main line industrial customers.

[fol. 39] (v) At the location indicated on the map attached hereto as Exhibit "B", Sun owns the following major appurtenant properties and facilities: None.

III.

Copy of this application has been served upon The Governor of the State of Mississippi.

IV.

There is attached hereto the following exhibit:

(1) Exhibit "B". A general key map of applicant's facilities for the production, gathering, or sale of natural gas to the purchaser designated above at the location indicated on said map, and showing the information designated in Section 157.25 of the Commission's regulations as amended by Order No. 174-A.

Applicant's description or showing of any facilities in this application or in any exhibit attached hereto is intended only for the information of the Commission, and not for the purpose of requesting a certificate of public convenience and necessity for the construction or operation of such facilities. This application is hereby made only for a certificate of public convenience and necessity for the construction or operation of such facilities. This application is hereby made only for a certificate of public convenience and necessity authorizing the sale of natural gas in the circumstances above described. Applicant does not herein represent any person, individual, or corporation, other than Sun Oil Company.

[fol. 40] Wherefore, Sun respectfully requests that (a) the Commission without a hearing issue the disclaimer of jurisdiction herein requested, or (b) in the alternative, and without waiving Sun's position that the Commission lacks jurisdiction over Sun, its facilities and operations, that the

Commission issue the certificate of public convenience and necessity herein requested.

Sun further requests that, in the event the disclaimer of jurisdiction herein requested is not granted, this application be disposed of in accordance with the shortened procedure provided for in Section 1.32 of the Commission's Rules and Regulations. In accordance with said rule, Sun hereby requests that the intermediate decision procedure be omitted and waives oral hearing and opportunity for filing exceptions to the decision of the Commission.

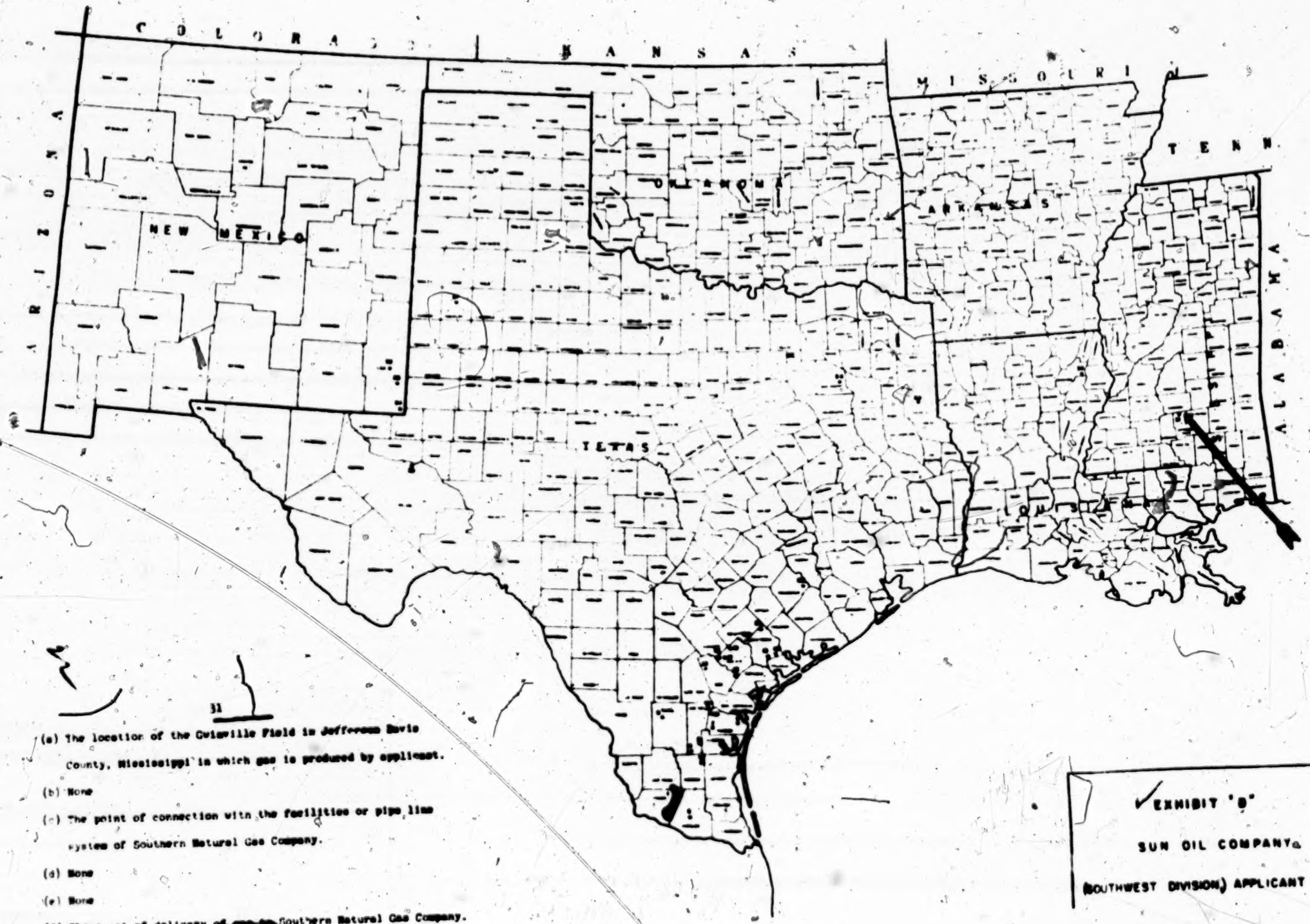
Respectfully submitted,

SUN OIL COMPANY (SOUTHWEST DIVISION),

By (Illegible),
Superintendent of Natural Gas Dept.

P. O. Box 2880,
Dallas, Texas.

[fol. 41] *Duly sworn to by B. E. Warren, jurat omitted in printing.*



31

(a) The location of the Gwinville Field in Jefferson Davis County, Mississippi in which gas is produced by applicant.

(b) None

(c) The point of connection with the facilities or pipe line system of Southern Natural Gas Company.

(d) None

(e) None

(f) The point of delivery of [redacted] Southern Natural Gas Company.

EXHIBIT "B"

SUN OIL COMPANY

(SOUTHWEST DIVISION) APPLICANT

[fol. 43] BEFORE THE FEDERAL POWER COMMISSION

FPC GAS RATE SCHEDULE NO. 55

Filing Date Nov. 30, 1954.
Effective Date Accepted.

Original Papers

This Agreement, made and entered into by and between Sun Oil Company, a corporation of the State of New Jersey, hereinafter called "Seller", and Southern Natural Gas Company, a Delaware corporation, herein called "Buyer,"

Witnesseth That:

Whereas, Seller is the owner and holder of various oil, gas and mineral leases covering lands in Jefferson Davis and Simpson Counties, Mississippi, in what is known as the Gwinville Gas Field and has developed a supply of natural gas from such leases, and Seller desires to secure a market for such gas from its existing wells and from wells it may drill in the future or in which it may have an interest in said field; and

Whereas, Buyer is the operator of a natural gas pipe line system and has a market for natural gas produced from the Gwinville Gas Field, and Buyer desires to purchase gas produced by or for Seller from said field;

Now, Therefore, in consideration of the mutual covenants herein contained, Seller and Buyer agree as follows:

Article I

Gas Sold and Purchased

Subject to the terms and provisions hereof and during the term of this agreement, Seller agrees to use reasonable [fol. 44] diligence to make available to Buyer and to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller and to pay Seller for, natural gas produced from Seller's lands and leases in the Gwinville Gas Field and from wells in said field in which Seller may have an interest, in the amounts and for the price hereinafter specified. Within the minimum and maximum

quantity of gas hereinafter specified, and subject to the terms of Article III hereof, this agreement shall apply to all merchantable natural gas that may be produced from all wells now drilled or which may hereafter be drilled on all lands and leaseholds now or hereafter owned by Seller located in the Gwinville Gas Field as now defined, or as it may be extended, and all of Seller's proportionate part of all merchantable natural gas that may be produced from unitized or pooled lands and leaseholds owned or controlled by Seller, and the proportionate part of such gas which belongs to other owners and leaseholders in such unitized or pooled lands and leaseholds which Seller has or shall hereafter from time to time have the right to market under the terms of the pooling, unitization or joint operating agreements or other arrangements to which Seller and such others are parties and which such other parties have not, or from time to time do not, elect to take in kind or otherwise to dispose of. However, there are reserved by Seller from the terms of this agreement such quantities of gas as are or may be reserved at the well to Seller's leaseholders for the use of the lessors in such leases and such gas as Seller may use in the Gwinville Gas Field for drilling of wells, pumping of oil wells, gas lift and other field operations and domestic use in offices, warehouses and employee residences. Seller shall also have [fol. 45] the right to use gas produced from lands and leaseholds subject to this agreement for cycling operations in the Gwinville Gas Field when permitted or required to do so by any regulatory body having jurisdiction thereof, provided that such cycling operations shall be conducted to the extent permitted by applicable laws and regulations and the requirements of safe and efficient methods of operation in such manner as to provide a quantity of gas equal to that which Buyer has a right to purchase hereunder.

Seller agrees promptly after the execution hereof to furnish Buyer a list of Seller's leases in the Gwinville field on which production has been required and a description of the acreage covered by such leases which has been assigned to producing wells, and to supplement said list and description from time to time as additional wells are drilled and additional acreage is proven to be productive.

Article II

Delivery of Gas

Seller shall install and operate at each of its wells a standard gas-oil separator to separate the liquid hydrocarbons and other fluids and foreign matters contained in the gas produced from each well, and all gas sold and purchased hereunder shall be delivered by Seller to Buyer at the outlet of each such separator. Seller shall be in control and possession of such gas and liable and responsible therefor up to such point of delivery, and Buyer shall assume all cost and expense in connection with the gathering and [fol. 46] transportation of such gas and all liability and responsibility therefor from and after such point of delivery. Seller may operate such separators in any manner which in the opinion of Seller is necessary to the separating, recovering or extracting of oil, condensate, liquid hydrocarbons, fluids, and other matters from the gas, and all of such products separated, recovered and extracted in said separators by Seller shall remain the property of Seller.

Article III

Buyer's Facilities

Buyer agrees to undertake with diligence the construction of whatever gathering system, pipe lines and other facilities may be necessary for it to receive and purchase gas from Seller hereunder, including the securing of any certificate of public convenience and necessity which may be necessary for such system, lines and facilities, and upon completion thereof Buyer agrees to maintain and operate same in a good and workmanlike manner. Notwithstanding any other provisions hereof, should Buyer not complete its facilities and commence the taking of gas hereunder on or before January 1, 1948, or the paying for gas hereunder which is not taken, Seller shall have the right and option to cancel and terminate this agreement. Buyer also agrees to extend its facilities from time to time to include connections to each additional well from which gas may be delivered hereunder as drilled and completed in the field by or for Seller which is capable of delivering, under

the provisions of this agreement, not less than one (1) million cubic feet of gas per day. Buyer may, if it elects, ex- [fol. 47] tend its facilities to any well completed by Seller in the field which is not capable of delivering such a quantity of gas, and if Buyer does not elect to do so within a reasonable time after such well is completed, Seller shall have the right to construct sufficient lines to connect such well to Buyer's facilities, and in either event such well, when so connected by Buyer or Seller, shall thereafter be subject to the terms and provisions of this agreement. Seller, to the extent that it may lawfully do so, hereby grants to Buyer right of ways and easements (with rights of ingress and egress thereto and therefrom) for the construction, maintenance and operation of Buyer's gathering system, pipe lines and facilities over and across the lands and leaseholds of Seller in the Gwinville Gas Field.

Article IV

Quantities of Gas

Subject to such quantity of gas being available, Buyer agrees that it will take from the Gwinville Field during each period of twelve consecutive calender months commencing with the period beginning on the first day of the month following the month in which gas shall first be delivered hereunder, a minimum of twenty per cent (20%) of its total line requirements. At Buyer's option, Buyer may increase its takings from the Gwinville Field up to a minimum of thirty per cent (30%) of its total line requirements by giving Seller six (6) months' advance written notice of its intention so to do. By "line requirements" is meant:

[fol. 48] (a) All of the gas which may be required by Buyer for delivery for consumption in, or for sale from, Buyer's pipe line facilities as same are now constituted in the states of Mississippi (East of Pickens, Mississippi), Alabama, Tennessee and Georgia, or as same may be enlarged, extended or expanded in such states or in or to other states along the Eastern seaboard of the United States;

(b) All of the gas which may be lost from Buyer's pipe line in transit; and

(c) All of the gas which may be used by Buyer in the operation of compressor stations and/or otherwise on Buyer's pipe line.

Of such requirements during each twelve (12) consecutive calendar month period, Buyer agrees to take and receive from Seller and to pay Seller for, or to pay Seller for if not taken, Seller's proportionate part of such requirements on an acreage basis. Seller's proportionate part of Buyer's requirements shall be determined by the ratio or proportion which the total number of acres of land owned, leased or controlled by Seller and included within drilling units established by agreement or by the rules or orders of any regulatory body having jurisdiction on which a producing well or wells in the Gwinville Field shall be located, bears to the total number of acres included within such drilling units in said field on which are located a producing well or wells from which Buyer is taking gas.

For the purpose of determining Seller's proportionate part of Buyer's requirements as provided for above in this [fol. 49] Article IV, Seller's percentage participation shall be determined each month on an acreage basis as above provided, and Seller agrees that the monthly percentages so determined will be averaged over each twelve month period to determine Seller's annual participation under this contract. Any changes in Seller's participation brought about by supplemental lists furnished by Seller as provided in the last paragraph of Article I hereof will become effective on the first day of the calendar month following the date of receipt by Buyer of such supplemental lists.

Buyer shall have the right to take and purchase from Seller hereunder at any time, and from time to time, a daily quantity of gas equal to one hundred fifty per cent (150%) of the minimum in effect on the date of purchase which Buyer is obligated to purchase from Seller hereunder. Buyer shall furnish Seller periodic statements at least each three (3) months as to the amount of gas constituting Buyer's line requirements since the last statement was furnished, and Seller shall be entitled to verify the

correctness of such statements by checking Buyer's books and records pertaining to such requirements. At the time of furnishing Seller such periodic statements as to the amount of gas constituting Buyer's line requirements, Buyer shall furnish Seller, in addition thereto, statements showing the productive acreage of others from whom Buyer is purchasing gas in the Gwinville Field, so that Seller may check the accuracy of Buyer's percentage determinations.

It is recognized that there will be some fluctuation in Buyer's takings of gas under this agreement, and in measuring Buyer's compliance with the foregoing obligation, [fol. 50] Buyer's purchases of gas hereunder shall be measured over the respective annual periods specified above; provided, however, that Buyer agrees, notwithstanding any of the foregoing provisions of this article, to take and receive hereunder, from each of Seller's wells in the Gwinville Field to which Buyer's facilities are connected and which is capable of delivering gas hereunder, a reasonable quantity of gas during each calendar month this agreement is in effect so that Seller may produce gas in paying quantities from each of its wells in the Gwinville Field during each month this agreement is in effect, and to the extent that its operating conditions and market outlet will allow, Buyer will exercise reasonable diligence to take and receive gas currently hereunder from Seller at as uniform a rate as is possible. Buyer further agrees to give Seller as much advance notice as Buyer can reasonably give of substantial changes in its takings of gas under this agreement. In this connection, Buyer agrees that, if Seller has available gas produced from any well in which Seller has an interest but where there is another purchaser of gas produced from such well, Buyer will take and purchase currently all of Seller's portion of the gas produced from such well, and Buyer will make the necessary arrangements to carry out its obligation to do so.

At the end of each annual period specified above, the minimum quantity of gas which Buyer is obligated to purchase hereunder during such period shall be determined, and if the quantity of gas purchased by Buyer during such period is less than such minimum quantity, Buyer

agrees to pay Seller for such deficiency, provided that dur-
[fol. 51] ing such period such minimum quantity of gas was available to Buyer hereunder from Seller's lands and leaseholds.

Buyer and Seller recognize that, in the operation of Buyer's pipe line, it is necessary for Buyer to have knowledge in advance as to the quantities of gas which will be available to Buyer both annually and at periods of maximum demand. On or after February 1, but not later than March 1, of any year during the term of this agreement, Buyer may request Seller to furnish Buyer with evidence relating to Seller's ability to deliver gas hereunder during each of the three twelve-month periods following November 1 of the year in which such notice is given. Such notice shall include an estimate by Buyer which shall give reasonable effect to all pertinent factors of the amount of the annual line requirements of Buyer as hereinabove defined for each of the three twelve-month periods following November 1 of the year in which such notice is given and of the maximum daily amount of the line requirements during each such period. Such evidence to be furnished by Seller to Buyer shall include a statement of the number of acres owned or leased by Seller in the Gwinville Field, the number of wells located on such acreage, the productive capacity (both actual and legally allowable) of such wells, an estimate as to the gas reserves recoverable from such acreage, Seller's contractual or other obligations to deliver gas from such acreage to persons other than Buyer, and such other data as may have a bearing on Seller's ability to deliver gas hereunder. Such evidence shall be submitted to Buyer within ninety (90) days after the receipt by Seller of notice from Buyer as aforesaid. Unless from the evidence so submitted it appears reasonably certain [fol. 52] that Seller will be able to deliver the quantity of gas provided to be delivered under the provisions of this agreement during each of the three twelve-month periods following November 1 of the year in which such notice is given, Buyer at its option, exercisable within three (3) months after the receipt of such evidence may, on six (6) months' written notice to Seller, reduce Buyer's minimum obligation under this agreement then in effect, effective as

of the first day of any month after the expiration of such six (6) month period, to a minimum quantity of gas equal to sixty-six and two-thirds per cent ($66\frac{2}{3}\%$) of the quantity of gas which it appears reasonably certain Seller will be able to deliver on any day during the last of such three twelve-month periods, unless within such six (6) month period Seller increases, or furnishes evidence of its ability to increase, within a reasonable time, its ability to deliver gas hereunder sufficiently to enable Seller to deliver the quantity of gas provided to be delivered under the provisions of this agreement during such three twelve-month periods.

In determining from the evidence so submitted whether Seller will be able to deliver the quantity of gas provided to be delivered hereunder during each of the three twelve-month periods above referred to, due consideration shall be given to the plans of Seller, if any, submitted as a part of such evidence for future development of its sources of supply or for the unitization of lands, leases or gas purchase contracts, provided that such plans contemplate their consummation with reasonable promptness and that the evidence of the same is verified by some responsible officer of Seller.

[fol. 53] It is also understood and agreed that, notwithstanding any provision of this agreement, Seller shall not be obligated to produce its wells at a rate in excess of that allowed by applicable proration schedules, or at a rate which in Seller's opinion will be detrimental to the ultimate recovery of gas from Seller's lands and leaseholds in the field. Subject, however, to the foregoing provision of this article, Seller agrees to use reasonable diligence to drill and equip, in a good and workmanlike manner, a sufficient number of wells on its lands and leaseholds in the field to supply Buyer with the quantity of gas sold and purchased hereunder.

Seller shall also have the right to sell to others and otherwise to dispose of gas produced from lands and leaseholds subject to this agreement in excess of the maximum quantity which Buyer has the right to purchase hereunder. Seller shall also have the right, without regard to the foregoing provisions of this article, to sell to others or otherwise to

dispose of sufficient gas produced from its lands and leaseholds subject to this agreement, to protect Seller's correlative rights in the gas reservoir in the Gwinville Field, to give Seller its pro rata share of the gas produced from the field, and to protect Seller's lands and leaseholds from drainage by wells on adjacent premises.

Article V

Quality of Gas

Subject to the provisions of Article VII hereinafter contained, the gas sold and purchased hereunder shall be gas [fol. 54] produced in the natural state from a well which, if classified under the laws or the rules or orders of a regulatory authority of the State of Mississippi, is not classified as an oil well, and in the absence of such classification such gas sold and purchased shall be gas which is not associated or blended with crude petroleum oil at the time of production from the well. Subject to the later provisions hereof concerning construction of a plant for the extraction of gasoline and other liquid hydrocarbons, such gas shall include all liquids or liquefiable hydrocarbons contained therein except those recovered by Seller in its separators.

Buyer shall not be obligated to purchase any gas (including gas purchases pursuant to the terms of Article VII hereof) containing more than twenty (20) grains of sulphur nor more than one and one-half (1½) grains of hydrogen sulphide to each one hundred (100) cubic feet of gas, and all gas delivered by Seller to Buyer hereunder shall be reasonably free of objectionable liquids and solids.

Article VI

Delivery Pressure

All gas delivered by Seller to Buyer hereunder, except gas purchased under the terms of Article VII hereof and except such gas as Buyer elects to take at a lesser pressure, shall be delivered at a pressure of not less than one thousand fifty (1050) pounds per square inch gauge pressure so long as the natural flowing pressure of Seller's wells is sufficient to enable Seller to make delivery at such pressure. In the

[fol. 55] event it appears that the natural flowing pressure of any or all of Seller's wells, delivery from which is needed in order to deliver to Buyer the quantity of gas Buyer is purchasing hereunder (except wells delivering gas under the terms of Article VII hereof), is about to decline to a pressure less than that which will permit gas from Seller's wells to enter Buyer's transmission facilities at the pressure at which such facilities shall at the time be operated (not, however, in excess of an initial pressure of one thousand (1,000) pounds per square inch gauge pressure), or in the event that Seller shall have installed a liquid recovery plant as hereinafter provided and shall deliver gas to Buyer at a pressure of less than one thousand (1,000) pounds per square inch gauge pressure, then in either event Buyer shall install facilities to compress gas delivered to it hereunder prior to its introduction into Buyer's facilities. In such event, and effective as of the date of commencement of the operation of such compression facilities, the price payable for all gas delivered hereunder by Seller produced from wells connected, or which may thereafter be connected, to such compression facilities, shall be reduced by one-half cent (½c) per thousand (1,000) cubic feet.

In the event Buyer shall install compression facilities as above provided, then Buyer shall operate same for the compression of gas delivered hereunder during the remainder of the term of this agreement and shall provide such additional compressors, if any, as may be necessary in order for Buyer to take gas hereunder; provided, however, that, except in connection with gas purchased under the terms of Article VII hereof, in the event the natural flowing pressure [fol. 56] of any or all of Seller's wells shall decline to a point which will not permit the delivery of gas to the intake or suction side of such compression facilities at a pressure of at least five hundred (500) pounds per square inch gauge pressure, then Buyer may at its option, exercisable on ninety (90) days' written notice to Seller, cancel and terminate this agreement as to any or all of such wells.

Buyer shall give Seller not less than sixty (60) days' written notice of its intention to install compression facilities as above provided

Article VII

Purchase of Gas Associated With Oil

Notwithstanding any other provision of this agreement (other than the minimum and maximum provisions of Article IV above), if one or more of Seller's wells or wells in which Seller has an interest, in the Gwinville Gas Field, are classified as an oil well, or if the gas produced from any of such wells is associated or blended with crude petroleum oil at the time of production, Buyer agrees, at Seller's option and upon written request from Seller, to take and purchase from Seller, under this agreement, all of such gas which Seller may have available for sale. If Seller exercises such option, Buyer will lay and construct, with the approval of Seller, the necessary gathering lines, compressors and all other equipment necessary for it to take and receive the gas into its gathering system, regardless of the quantity of such gas available in any particular well or of the pressure at which such gas is produced. Seller [fol. 57] agrees to reimburse Buyer at monthly intervals for the actual expenses (including a reasonable amount for overhead) incurred by Buyer in connection with the operation of such lines, compressors and equipment for the gathering and compressing of the gas purchased under this article, together with a reimbursement for depreciation or amortization upon the construction costs of such lines, compressors and facilities at a reasonable rate based upon due regard for Seller's available gas reserves, and a payment sufficient to give Buyer a six per cent (6%) return on Buyer's actual investment in constructing such lines, compressors and equipment. Buyer shall keep an accurate and separate record of its costs and expenses incurred in this connection and will render Seller monthly statements showing in detail the amount and nature thereof. The payment by Seller of the amount due to Buyer under the terms of this article pursuant to such statements shall not preclude Seller from challenging the accuracy thereof, and Seller shall have the right at all reasonable times to inspect and audit Buyer's books and records pertaining to such costs and expenses in order to determine the accuracy of such statements. Should Seller not exercise its option to have

Buyer take and purchase such gas, Buyer shall have the right to take and purchase such gas at Buyer's expense.

All of such gas so taken and purchased by Buyer shall be considered in the application of the minimum and maximum provisions of Article IV above. Seller shall have the right to take or to sell to others the oil, condensate and other liquid hydrocarbons recovered by Seller in its separators or traps located at or near the wellhead, and Buyer [fol. 58] shall deliver to Seller, as Seller may direct, at the compression facilities, all liquid hydrocarbons recovered by Buyer from the gas purchased under this article.

Article VIII

Warranty of Title

Seller hereby warrants the title to all gas delivered to Buyer hereunder, Seller's right to sell and deliver same, and that it is free of all liens and adverse claims, including liens and claims for royalties or other similar charges, and to indemnify Buyer against all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of any adverse legal claims of any and all persons to or against said gas, if notified thereof by Buyer. Seller shall pay to the proper parties all amounts which may be due for royalties or any other interests in said gas and all taxes payable on said gas by Seller under the terms of Article XII hereof.

No conveyance, transfer or assignment of any interest of Seller shall be binding upon Buyer until Buyer has been furnished with a certified copy of such conveyance, transfer or assignment.

Article IX

Meters

With each well connected to its gathering system, Buyer agrees to install, operate and maintain in accurate repair suitable orifice meters and other appropriate equipment for the measurement of all gas delivered to it hereunder. Seller [fol. 59] to the extent it may lawfully do so, hereby grants to Buyer an easement covering a tract of land approximately one hundred by fifty feet and located at a point to

be mutually agreed upon by the parties approximately two hundred feet distant from each well for the purpose of installing, maintaining, repairing and removing any and all measuring and other equipment installed by Buyer, together with the right of ingress and egress over any and all contiguous lands and leaseholds of Seller so that Buyer may at all times have access to the tract of land on which Buyer shall install its equipment.

All meters installed by Buyer shall be equipped appropriately for the computation of volumes of gas in the manner hereinafter provided.

Buyer shall read the meters daily, or as often as may be necessary, and shall make periodic tests of said meters at least once each thirty (30) days and more often as Buyer may deem necessary. Seller shall have the right to challenge the accuracy of any meter and, when challenged, such meters shall be tested and, if necessary, repaired by Buyer. The cost of such special test shall be borne by Buyer if the percentage of inaccuracy is found to be more than two per cent (2%); but if the percentage of inaccuracy is found to be two per cent (2%) or less, the cost of such special test shall be borne by Seller. If any meter is found on any test to be inaccurate by more than two per cent (2%), then correction shall be made at the rate of such inaccuracy for the period which is definitely known and agreed upon, and in case such period is not definitely known and agreed upon, [fol. 60] then for a period extending back one-half of the time elapsed since the last date of calibration.

Readings, calibrations and adjustments of meters and the changing of charts shall be done by employees or agents of Buyer, but Seller shall at all reasonable times have access to the metering equipment and the charts and records therefrom, which shall remain the property of Buyer. Such charts and records shall be kept on file by Buyer for such a period as may be required by law or the rules of any regulatory authority having jurisdiction, after which time they may be destroyed at Buyer's option.

Seller may at its option and expense install and operate such meters as Seller may desire, to check Buyer's meters; but measurement of gas for the purpose of this agreement shall be by Buyer's meters.

Article X

Measurement

The unit of measurement for the purpose of this agreement shall be one thousand (1,000) cubic feet of gas, computed as hereinafter provided.

A cubic foot of gas shall mean the amount of gas necessary to fill a cubic foot of space when the gas is at a base pressure of two (2) pounds gauge pressure above 14.7 pounds per square inch atmospheric pressure and at a base temperature of sixty degrees (60°) Fahrenheit, and volumes of gas shall be computed into such units in the manner described below.

[fol. 61] Recognizing that the atmospheric pressure may vary somewhat from time to time and that the average atmospheric pressure is approximately 14.7 pounds per square inch, it is agreed that the atmospheric pressure shall be assumed to be 14.7 pounds per square inch regardless of the actual atmospheric pressure at which gas is measured and delivered. It is likewise agreed that the gas shall be assumed to obey Boyle's Law, and no correction shall be made for any deviation from this law.

The orifice coefficient for each meter shall be calculated at the above base pressure and base temperature and a flowing temperature of sixty degrees (60°) Fahrenheit and for a gas of sixty hundredths (.60) specific gravity. Pressure taps for orifice meter installations shall be taken from the orifice flange.

The temperature of the gas shall be determined by the use of a recording thermometer so installed that it may properly record the temperature of the gas flowing through each meter. The average temperature recorded shall be used in computing measurements, and the orifice coefficient shall be corrected for variation in the average temperature from sixty degrees (60°) Fahrenheit.

The specific gravity of the gas shall be determined by spot tests made with an Edwards type gas balance, or such other method as may be agreed upon between the parties, said tests to be made as frequently as is found necessary in practice. Each test so made shall determine the specific gravity to be used in the computation of the volume of gas

delivered during the succeeding billing months until the [fol. 62] next test. The orifice coefficient shall be corrected for variation in specific gravity from sixty hundredths (.60).

All orifice meter computations shall be made in accordance with formulas as set forth in the Natural Gas Handbook by John C. Diehl, 1927 Edition, with the use of coefficient tables contained in pages 143 and/or 145, corrected to the base pressure provided for above in this Article X.

Article XI

Price

Subject to the provisions of Article VI hereof, providing for a possible adjustment in price, Buyer agrees to pay Seller for all gas purchased hereunder a price

(1) of seven and one-half cents (7½c) for each one thousand (1,000) cubic feet of gas during the first five (5) years of the term hereof;

(2) of eight cents (8c) for each one thousand 1,000) cubic feet of gas during the second five (5) years of said term.

In this connection, it is understood that by this agreement Seller is not dedicating to Buyer, or to Buyer's market outlet, any portion of Seller's gas reserves in the Gwinville Gas Field or any portion of the gas produced by Seller from its wells in said field, but that Seller is simply selling and Buyer is purchasing the quantity of gas called for in this agreement on the terms specified in this agreement and for the price set out above; and should the Federal Power [fol. 63] Commission or any other Federal, State or other governmental regulatory body undertake to reduce the price which Seller is to receive under this agreement, or directly or indirectly to take any action which would bring about such a result, then in such an event Seller at its option may cancel and terminate this agreement upon thirty (30) days' written notice to Buyer of its intention so to do. In the event Seller exercises the option granted to it in this paragraph, Seller shall reimburse Buyer for the unamortized value, on the date of cancellation of that portion of Buyer's gathering system installed by Buyer for the exclusive purpose of taking gas from Seller hereunder.

Such unamortized value shall be determined by deducting from the actual cost to Buyer of such portion of said system an amount equivalent to the volume of gas purchased by Buyer from Seller hereunder prior to the date of cancellation by a price of one-half cent (½c) per thousand (1,000) cubic feet of such gas. The failure of Seller to exercise such option in one or more instances shall not be a waiver of Seller's rights and option in other instances.

On or before the twentieth day of each calendar month, Buyer shall make payment to Seller of the amount due by Buyer for gas purchased hereunder during the preceding calendar month. Such payment shall be accompanied by a statement of the amount of gas delivered hereunder during such preceding month, and at Seller's request Buyer will furnish Seller supporting meter charts and records substantiating such payment, which charts and records shall be returned to Buyer within ten (10) days after receipt by Seller.

[fol. 64] Should Buyer fail to pay any amount due to Seller when same is due, interest thereon shall accrue at the rate of six per cent (6%) per annum from the date when such amount was due until same is paid. If any failure to make payment continues for sixty (60) days, Seller may suspend deliveries of gas hereunder, but the exercise of such rights shall be in addition to any other remedies available to Seller.

Article XII

Taxes

All existing severance and production taxes and assessments or other charges upon the production of gas or sale of gas by Seller to Buyer under this agreement shall be paid by Seller, and all taxes, assessments and other charges upon the gathering, transportation, sale and use of such gas after its delivery to Buyer hereunder shall be paid by Buyer. Any increases in existing severance and production taxes, assessments or other charges upon the production of gas or sale of gas by Seller to Buyer hereunder shall be assumed equally by Seller and Buyer, with Seller paying such taxes and Buyer reimbursing Seller for the portion thereof assumed by Buyer in connection with Buy-

er's payments for gas purchased hereunder; provided, however, that should such increase or increases applicable to each party aggregate more than one cent (1c) for each one thousand (1,000) cubic feet of gas sold and purchased hereunder, then either party shall have the right to cancel and terminate this agreement upon thirty (30) days' written notice to the other, unless the party so notified elects, within such thirty-day period, to assume that portion of [fol. 65] such aggregate increase of the party giving the notice in excess of one cent (1c), or unless the parties mutually agree upon some basis for allocating such excess.

Article XIII

Extraction of Hydrocarbons

Seller reserves the right and option to extract, or to cause to be extracted, in a plant located in or near the Gwinville Field, the liquid hydrocarbons contained in the gas, subject to this agreement, in addition to those which may be recovered by the separators installed by Seller in accordance with the provisions hereof. All liquid hydrocarbons so extracted shall belong to Seller. In the event that Seller exercises such option, the point of delivery of gas hereunder shall, in lieu of the several points of delivery provided for elsewhere herein, be a point of connection between the facilities of the plant in which Seller is extracting or causing to be extracted such liquid hydrocarbons and the facilities of Buyer located at or near the tail gate of said plant. In such event also, if there is any gathering tax imposed upon Seller by virtue of Seller's exercise of such option, it is agreed that Buyer will reimburse Seller for one-half of the amount of such tax.

Article XIV

Term

Subject to the various termination options given the parties hereto by the terms hereof, this agreement shall remain in force and effect for a period of ten (10) years, [fol. 66] commencing on the date on which the first delivery of gas is made by Seller to Buyer hereunder.

Article XV

Force Majeure

Except for the termination privilege given to Seller on Article III hereof for Buyer's failure to commence taking or paying for gas on or before January 1, 1948, if either party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, other than to make payments due hereunder, it is agreed that on such party's giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides lightning earthquakes fires storms floods, washouts, arrests and restraints of governments and people, civil disturbances explosions breakage or accident to machinery or line of pipe, the necessity for making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire [fol. 67] failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include (a), in those instances where any party hereto is required to obtain servitudes, right of way grants, permits or licenses to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, right of way grants, permits or licenses, and (b), in those instances where any party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permission

from any governmental agency to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permissions.

It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

[fol. 68]

Article XVI

Regulatory Requirements

This agreement shall be subject to all present and future valid rules, regulations and orders of any regulatory body having jurisdiction, and shall be construed in accordance with the laws of the State of Mississippi; provided, however, that this Article XVI shall be without prejudice to Seller's right to cancel this agreement as provided in Article XI above.

Article XVII

Notices

All notices hereunder, except with regard to the dispatching of gas, shall be deemed to be duly given or delivered if in writing and sent by postpaid registered mail addressed to the respective parties at the addresses stated below, or such other addresses as they shall respectively hereafter designate in writing.

Sun Oil Company,
First National Bank Building,
Dallas 1, Texas.

Southern Natural Gas Company,
P. O. Box 2563,
Birmingham, Alabama.

[fol. 69]

Article XVIII

Assignability

This agreement shall be binding upon, and the benefits hereof shall extend to, the successors and assigns of the respective parties hereto.

In Witness Whereof, this agreement has been executed in duplicate originals this 26th day of August, 1947, by Seller and by Buyer by its officers duly authorized.

SUN OIL COMPANY,
By J. HOWARD PRESSLEY,
Agent and Attorney in Fact,
Seller.

SOUTHERN NATURAL GAS
COMPANY,
By (Illegible),
President,
Buyer.

Attest:

(Illegible),
Secretary.

The State of Texas,
County of Dallas. ss.

Before the undersigned officer in and for said State and County duly authorized to administer oaths to take acknowledgments to deeds, personally came and appeared J. Howard Pressley, Agent, and Attorney in Fact for Sun Oil Company, a corporation of the State of New Jersey, who acknowledged to and before me that for and on behalf of said corporation he signed, executed and delivered the [fol. 70] foregoing instrument on the date therein written as the act and deed of said corporation, he being by said corporation duly authorized to do so.

Given under my hand and seal of office this the 3rd day of September, A.D., 1947.

MILDRED C. DESPAIN,
(Mildred C. DeSpain),
Notary Public in and For
Dallas County, Texas.

(Seal)

The State of Alabama,
County of Jefferson. ss.

Before the undersigned officer in and for said State and County duly authorized to administer oaths and to take acknowledgments to deeds, personally came and appeared C. P. Rather, President of Southern Natural Gas Company, a corporation of the State of Delaware, who acknowledged to and before me that for and on behalf of said corporation he signed, executed and delivered the foregoing instrument on the date therein written as the act and deed of said corporation, he being by said corporation duly authorized to do so.

Given under my hand and seal of office this the 26th day of August, A.D., 1947.

MARGARET SCHNELL.

(Seal)

[fol. 71]

BEFORE THE FEDERAL POWER COMMISSION

Received Nov. 30, 1954.

FPC GAS RATE.
Schedule No. 55.
Supplement No. 1.

Filing Date: Nov. 30, 1954.
Effective Date: Accepted.

Southern Natural Gas Company
Watts Building
Birmingham 8, Ala.

Sup. 1.

September 10, 1953

Sun Oil Company
First National Bank Building
Dallas 1, Texas

Gentlemen:

We refer to agreement dated August 26, 1947 between you and the undersigned relating to the purchase of gas

from the Gwinville field, which provides (Article IV), in effect, that we will take a total quantity equal to a specified percentage of our Line Requirements, as defined, from the Gwinville field during each period of twelve consecutive calendar months commencing with the twelve months period beginning on the first day of the month following the month in which gas was first delivered under said agreement, and that we will purchase from you your proportionate part of such total quantity determined on the basis of the proportion of your developed acreage to the total developed acreage in the field from which we are taking gas. Said agreement further provides at the [fol. 72] end of each such twelve months period the minimum quantity of gas which we are obligated to purchase during such period shall be determined and, if the quantity so purchased is less than such minimum, we will pay you for the deficiency.

As you know, we are purchasing gas under agreements similar to that between you and us from several other producers in the Gwinville field. Delivery of gas under said agreements commenced at different dates and, consequently, the annual periods for the determination of the minimum quantity which we are obligated to purchase from the field are not the same. It would be a matter of considerable convenience to us if we could determine our minimum take obligations from the field on the basis of a twelve months period which would be the same under all of the contracts. A further reason for the use of a uniform twelve months period may be found in the fact that several of the sellers own acreage in units in which other sellers also own acreage. We believe that this change would not adversely affect the rights of any seller.

We, accordingly, request that the provisions of Article IV of said contract be amended so that the period for determination of the minimum quantity of gas which Buyer is obligated to purchase shall be the twelve month period commencing January 1 of each calendar year.

We are sending similar letters to Sun Oil Company, Tide Water Associated Oil Company, Texas Gulf Producing

Company, The British-American Oil Producing Company, Hunt Oil Company and S. W. Richardson. Our contracts [fol. 73] with Humble Oil & Refining Company and Magnolia Petroleum Company, from which we are also purchasing gas in the Gwinville field, provide that the twelve months period for the determination of minimum take obligations shall be the calendar year.

If the foregoing is agreeable to you, please so indicate by signing and returning to us the enclosed copy of this letter.

Yours very truly,

SOUTHERN NATURAL GAS COMPANY,
By H. D. McHENRY,
(H. D. McHenry),
Vice President.

Accepted and confirmed.

SUN OIL COMPANY,
By T. F. HILL,
Agent and Attorney in Fact.

[fol. 91]

BEFORE THE FEDERAL POWER COMMISSION

Gas & Distillate Statement

Received Nov. 30, 1954

S. W. Richardson
Fort Worth National Bank Building
Fort Worth, Texas
Operator: S. W. Richardson

Gwinville Gas Unit #6 (C. E. Berry #1)
Gwinville Field
Jefferson Davis County, Mississippi

Gas Sales to Southern Natural Gas Co.

Period	Volume—MCF	Gross Value	Tax Deduction	Net Value	
June, 1954	43,796	$3,567.39	$218.92	$3,348.67	$3,348.67

Gas used by S. W. Richardson to Drill B. D. Walker Well #1

Period	Volume—MCF	Gross Value	Tax Deduction	Net Value	
June, 1954	52,069	$4,240.30	$260.22	$3,900.28	$3,960.28

Distillate Sales to Esso Standard Oil Co.

Period	Barrels—MCF	Gross Value	Tax Deduction	Net Value	
June, 1954	553.08	$1,639.16	$100.37	$1,558.78	$1,558.78
					$8,887.73

[fol. 92] Distribution

Voit Gilmore	20/320 or .062500000	$ 355.48
Humble Oil & Refining Company	30/320 or .093750000	833.22
Magnolia Petroleum Company	33/320 or .103125000	916.55
Sun Oil Company	41.623/320 or .129765425	1,152.32
B. D. Walker	.024/320 or .000075000	.67
S. W. Richardson	196.451/320 or .610784376	5,428.49*
		$8,887.73

* Credited in accordance with Division Orders on File.

[fol. 100]

Received Oct. 10, 4 06 PM '57.

This Agreement, made and entered into this 1st day of August, 1957, by and between Sun Oil Company, a New Jersey corporation, hereinafter called "Seller", and Southern Natural Gas Company, a Delaware corporation, hereinafter called "Buyer",

Witnesseth, That:

Whereas, Seller is the owner of the oil, gas and mineral leases, and interests in oil, gas and mineral leases and/or production units described in Exhibit "A" attached hereto, situated in the Gwinville Field in Jefferson Davis and Simpson Counties, Mississippi:

Now, Therefore, in consideration of the premises and the mutual covenants herein contained, Seller and Buyer agree as follows:

Article I.

(Definitions.)

As used herein, the following terms shall have the meanings set forth below:

(a) FIELD—The area in Simpson and Jefferson Davis Counties, Mississippi, known as the Gwinville Gas Field as the same Field is presently defined or as the same may be entered by wells which hereafter may be drilled.

(b) FIELD OPERATIONS—The use in the Field by Seller of gas for: (1) discharging Seller's obligations [fol. 101] to its lessors as provided in its leases; (2) drilling of wells, pumping of oil wells, gas lift operations, and cycling operations when required or permitted by applicable statutes or by the rules or orders of any regulatory body having jurisdiction thereof; (3) use in offices, warehouses, employee residences; and (4) other miscellaneous uses connected with Seller's operations in the Field.

(c) CONTRACT YEAR—A full period of twelve (12) consecutive calendar months, the first contract year to begin at 7:00 o'clock, A.M., Central Standard Time, on

September 3, 1957, and to end at 7:00 o'clock, A.M., Central Standard Time, on September 3, 1958.

(d) DAY—A period of twenty-four (24) hours calculated from 7:00 o'clock, A.M., Central Standard Time, on one day to 7:00 o'clock, A.M., Central Standard Time, on the following day. The date of a day shall be that of its beginning.

(e) MCF—One thousand (1,000) cubic feet of gas calculated in the manner specified elsewhere in this agreement.

(f) PSIG—pound per square inch gauge pressure.

(g) BTU—A British Thermal unit.

Article II.

(Gas Sold and Purchased.)

SECTION 1. Subject to the terms and provisions hereof and during the term of this agreement, Seller agrees to [fol. 102] sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller and pay Seller for, and to pay Seller for if available and not taken by Buyer, the volume of gas owned by Seller, hereinafter, capable of being produced from wells on Seller's Units, and interests in Units described in Exhibit "A" attached hereto in the Field and any additional lands or leases in the Field or interests therein which Seller may now own or hereafter acquire in said Field as said Field presently exists or hereafter may be extended. [JEP]

SECTION 2. Within the minimum and maximum quantities of gas hereinafter specified, and subject to the terms of Article VIII hereof, and except such gas as Seller shall require from time to time in its field operations, this agreement shall apply to all merchantable natural gas produced from leases now or hereafter [JEP] owned by Seller in said Field and Seller's proportionate share of all gas produced from lands, leases and production units owned by Seller and others, jointly. To the extent and during such times as non-operators owning interests in leases or production units operated by Seller are not

[fol. 93]

BEFORE THE FEDERAL POWER COMMISSION

Received Apr. 28, 10 12 AM '55.
FPC GAS RATE,
Schedule No. 55.
Supplement No. 2.
Filing Date: Apr. 28, 1955.
Effective Date 4-28-55-T.

Sun Oil Company
Southwest Division
Rio Grande National Building
Dallas 2, Texas

April 22, 1955

S. M. Gladney
Manager
T. F. Hill
Assistant Manager

Mr. Leon M. Fuquay, Secretary
Federal Power Commission
Washington 25, D.C.

Re: Sun Oil Company (Southwest Division) F.P.C. Gas Rate Schedule No. 55.

Dear Sir:

Sun Oil Company (Southwest Division) hereby files a change in the charges contained in the contract between Sun Oil Company and Southern Natural Gas Company, dated August 26, 1947, as therein provided for. Said contract has heretofore been filed as a rate schedule and has been designated Sun Oil Company (Southwest Division) F.P.C. Gas Rate Schedule No. 55.

[fol. 94] Such increase in charges is required because of the increase in the gas severance tax levied by the State of Mississippi, which increased tax became effective April 1, 1955. Accordingly, such change in charges takes effect under the terms of said contract as of April 1, 1955.

There are submitted herewith in accordance with Section 154.94 of the Commission's regulations, as amended by

Order No. 174-B, two copies of the comparative statement therein specified and two copies of a statement of the increased charges.

It is our understanding that the increase in gas severance tax did not become law until the legislative bill was signed by the Governor of the State of Mississippi on March 30, 1955. Moreover, Sun Oil Company was not officially notified of such change in the law until its receipt of official notice dated April 8, 1955. Therefore, it is requested that this change in charges be made effective on less than thirty days notice and in accordance with the effective date of such change provided in said contract, which effective date is April 1, 1955.

A copy of this letter and enclosures have been mailed to the purchaser.

With regard to this filing, address communications to: James E. Pew, Mgr., Natural Gas Dept., 1608 Walnut St., Philadelphia 3, Pa.; and B. E. Warren, P. O. Box 2880, Dallas, Texas.

This filing is made under compulsion of the Commission's Order No. 174-B without admitting the validity of such order and without admitting that the Federal Power Commission has jurisdiction over either Sun Oil Company or the subject matter of this filing, and without prejudice to the rights of Sun Oil Company to contest the validity [fol. 95] of said order, and without prejudice to its right to contest the jurisdiction of the Commission over the subject matter of this filing.

Yours very truly,

SUN OIL COMPANY (SOUTHWEST DIVISION),

By B. E. WARREN,
(B. E. Warren),
Superintendent, Natural Gas Department.

BEFORE THE FEDERAL POWER COMMISSION

Received Jul. 5, 3:52 P.M., '55.

Sun Oil Company
Dallas, Texas

Gwinville Field—Jefferson Davis County, Mississippi
Sales to Southern Natural Gas Company

	(Compressed)			(Non-Compressed)		
Period	MCF Sold 16.7#	Price Per MCF 16.7#	Total Value	MCF Sold 16.7#	Price Per MCF 16.7#	Total Value
Apr., 1954	33,896	.076410	$2,590.00	232,168	.08150126	$18,922.00
May, 1954	33,621	.076410	2,569.00	283,910	.08150126	23,139.00
June, 1954	27,182	.076410	2,077.00	176,304	.08150126	14,369.00
July, 1954	30,363	.076410	2,320.00	167,556	.08150126	13,656.00
Aug., 1954	28,570	.076410	2,183.00	360,902	.08150126	29,414.00
Sept., 1954	22,615	.076410	1,728.00	330,842	.08150126	26,964.00
Oct., 1954	28,818	.076410	2,202.00	369,700	.08150126	30,131.00
Nov., 1954	24,905	.076410	1,903.00	358,853	.08150126	29,247.00
Dec., 1954	18,583	.076410	1,420.00	419,441	.08150126	34,185.00
Jan., 1955	17,956	.076410	1,372.00	398,951	.08150126	32,515.00
Feb., 1955	17,354	.076410	1,326.00	370,657	.08150126	30,209.00
Mar., 1955	17,354*	.076410	1,326.00	370,657*	.08150126	30,209.00
Apr., 1955	33,896*	.076744	2,601.31	232,168*	.081857	19,004.58
May, 1955	33,621*	.076744	2,580.21	283,910%	.081857	23,240.02
June, 1955	27,182*	.076744	2,086.06	176,304*	.081857	14,431.72
July, 1955	30,363*	.076744	2,330.18	167,556*	.081857	13,715.63
Aug., 1955	28,570*	.076744	2,192.58	360,902*	.081857	29,542.36
Sept., 1955	22,615*	.076744	1,735.57	330,842*	.081857	27,081.73
Oct., 1955	28,818*	.076744	2,211.61	369,700*	.081857	30,262.53
Nov., 1955	24,905*	.076744	1,911.31	358,853*	.081857	29,374.63
Dec., 1955	18,583*	.076744	1,426.13	419,441*	.081857	34,334.18
Jan., 1956	17,956*	.076744	1,378.02	398,951*	.081857	32,656.93
Feb., 1956	17,354*	.076744	1,331.82	370,657*	.081857	30,340.87
Mar., 1956	17,354*	.076744	1,331.82	370,657*	.081857	30,340.87

Period	(Compressed) MCF Sold 16.7#	Price Per MCF 16.7#	Total Value	(Non-Compressed) MCF Sold 16.7#	Price Per MCF 16.7#	Total Value
Apr., 1954	33,896	.076410	$2,590.00	232,168	.08150126	$18,922.00
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Jan., 1956	17,956*	.076744	1,378.02	398,951*	.081857	32,656.93
Feb., 1956	17,354*	.076744	1,331.82	370,657*	.081857	30,340.87
Mar., 1956	17,354*	.076744	1,331.82	370,657*	.081857	30,340.87

* Estimated

Note: Prices shown for 12 month period preceding April 1, 1955 include tax reimbursement for increased taxes prior to April 1, 1955.

[fol. 97]

BEFORE THE FEDERAL POWER COMMISSION

STATEMENT OF REASONS, NATURE AND BASIS FOR INCREASED PRICE.

Received Apr. 28, 10 12 AM '55.

(Southern Natural)

By an Act styled House Bill No. 15, Extraordinary Session of 1955 of the Mississippi Legislature, the privilege tax on the business of producing or severing gas in the State of Mississippi was increased from 6% of the value of the gas to 6.84% of the value of the gas.

The contract here involved (Sun Oil Company (Southwest Division) F.P.C. Gas Rate Schedule No. 55) expressly provides, and the parties thereto expressly agreed, that any and all such changes in the tax rate should be specifically accounted for between the parties thereto by a change in the charge at which the purchaser shall account to seller under the terms of said contract.

The nature and effect of said change in charge, as filed herewith, and as required by said contract and by said Act of the Legislature of the State of Mississippi, is to increase the charge at which purchaser shall account to seller for each 1000 cubic feet of gas delivered under said contract, on and after April 1, 1955, from 8.150126c per m.c.f. for non-compressed gas and 7.650126c per m.c.f. for compressed gas to 8.183726c per m.c.f. for non-compressed gas and 7.683726c per m.c.f. for compressed gas, measured at a pressure base of 167 p.s.i.a.

[fol. 98] This change in charge relates directly to an increase in the actual cost of furnishing gas under the contract and represents a cost item which could not have been anticipated in such manner as to be included in the base price. The change in charge reflects the application of provisions of said contract which were negotiated in good faith at arm's length. However, the total charge as so increased does not exceed the present fair value or market value of gas in the field in which the property covered by said contract is located.

[fol. 99]

BEFORE THE FEDERAL POWER COMMISSION

FPC GAS RATE.
Schedule No. 87.

Filing Date: 10-10-57.
Effective Date: Suspended.

Received Oct. 10, 4 05 PM '57.

Agreement Dated August 1, 1957 Between Sun Oil Company and Southern Natural Gas Company

Providing for the Sale and Purchase of Gas From the Gwinville Field, Mississippi.

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taking their shares of the gas production therefrom in kind or otherwise disposing of the same, this agreement shall apply to such non-operators' shares of such gas production on a day to day basis, to the extent that Seller may have the right under its pooling, unitization or joint operating agreements with such non-operators to market their shares of gas production in such manner.

SECTION 3. Subject to the other provisions hereof, Buyer agrees to purchase and take during each contract [fol. 103] year, or to pay Seller for if not taken, an average daily quantity of gas equal to 66⅔% of the deliverability of Seller's wells covered hereby (determined in the manner hereinafter specified), hereinafter called "minimum annual take". Buyer further agrees to take from each of Seller's wells covered hereby during each month a reasonable quantity of gas (if and to the extent that gas is available from such well and tendered for delivery hereunder) to the end that Seller may produce gas in paying quantities from each of its wells in said Field during each month and Buyer agrees to take gas at as uniform a rate from time to time as is practicable, having regard to variations in Buyer's requirements.

SECTION 4. Seller agrees, subject to the other provisions hereof, to make available to Buyer on each day a quantity of gas equal to 100% of the total deliverability of Seller's wells covered hereby, as determined for the then current contract year in the manner hereinafter specified, such daily quantity being herein called "maximum daily take".

SECTION 5. Seller and Buyer agree that the deliverability of Seller's wells, for the purpose of determining the quantities of gas Buyer is required or permitted to take hereunder, shall be the amount of gas each well is capable of producing as determined by production tests (conducted pursuant to the rules of the Mississippi Oil & Gas Board) to be made between November 1 and December 31 of each year to be effective during the following calendar year; provided, however, should any new well or wells be completed in the presently known reservoirs or

should any well of Seller be reworked or reconditioned [fol. 104] during any year in such manner as to require a special production test, the deliverability of such well shall be its deliverability as reflected by such special test, effective as soon as practicable and until the results of the next following annual deliverability test hereunder become effective. Seller's total deliverability, as so determined, shall be the total of the deliverability of all of its wells, its proportionate part of the deliverability of wells on leases or units jointly owned by Seller and others, and the proportionate part of the deliverability of wells operated by Seller allocable to gas produced therefrom which Seller has the right from time to time to market on a day to day basis during such times as such right to market exists.

For the period prior to January 1, 1958, the results of the last test made prior to December 1, 1957 shall apply until the first annual tests become effective as above provided.

In the event the Mississippi Oil & Gas Board shall cease to require production tests, to become effective January 1 of each year (or some other test equally acceptable to both Seller and Buyer), upon which the determination of the deliverability of Seller's wells is based hereunder, Seller and Buyer agree that they will continue to conduct joint tests similar to those currently required by said Board, to be made annually during the period between November 1 and December 31, or such other period as may be mutually agreed upon, and that such joint tests shall be the basis for determining the rights and obligations of the parties hereunder.

[fol. 105] In the event Buyer shall purchase gas from others in said Field and the basis of determining the volumes of gas which Buyer shall have the right to take from the wells of such parties is not the same as that used hereunder, or if the circumstances under which such tests are made are not identical with the circumstances under which the deliverability of Seller's wells is determined, Buyer agrees to adjust Seller's deliverability to compensate for the diverse test conditions and to take

ratably as between Seller and other producers in such Field from which Buyer may purchase gas.

In taking ratably as between Seller and such other producers in the Field, Buyer shall consider not only the deliverability of wells but also the acreage and allowables assigned to wells and such other available information and data as may be pertinent to such determination.

SECTION 6. In the event Buyer shall fail to take (unless such failure is excused under the provisions of the force majeure clause hereof; during any contract year a quantity of gas equal to the minimum annual take for such year, Buyer shall within sixty days after the end of such year pay Seller, at the price applicable during such year, for a quantity of gas equal to the difference between the minimum annual take for such year and the quantity taken during such year, such difference to be reduced, however, by the aggregate of the quantities (up to the maximum daily take) which Buyer elected to take on any days during such year and Seller failed for any reason to deliver. Such payment, if made, shall be credited against amounts due for gas taken each year during the next [fol. 106] two contract years in excess of the applicable minimum annual take for each of such two ensuing contract years until the aggregate of such credits equals the amount of such payment; however, that this provision shall not operate to extend the term of this agreement as the same is fixed elsewhere herein.

SECTION 7. It is expressly understood and agreed that the provisions of this Article II fixing the deliverability of Seller's wells as the basis for determining the minimum annual take and the maximum daily take are intended to apply only to the presently known reservoirs underlying the leases and/or production units described in Exhibit "A". In the event that production shall hereafter be obtained by Seller on its leases in said Field which are from time to time subject to this agreement, from a reservoir or reservoirs other than the presently known reservoirs, Seller and Buyer shall agree upon a reasonable basis for Buyer's minimum and maximum takes from such after discovering and/or developed additional

gas reserves. Anything in this agreement contained to the contrary notwithstanding, without limitation of the generality, and specifically notwithstanding the provisions of Article XVI hereof, no deliveries hereunder of gas produced from such additional reserves shall be required or made without the written consent of Seller until Seller and Buyer have agreed in writing on a withdrawal formula applicable to such additional reserves. A separate withdrawal of gas from each such additional reservoir in said Field from which gas may be produced from the leases subject to this agreement, at the option of Seller.

[fol. 107] SECTION 8. If one or more of Seller's wells or wells in which Seller has an interest in the Gwinville gas field are classified as oil wells, or if the gas produced from any of such wells is associated or blended with crude petroleum oil at the time of production (the gas from such wells being herein called "oil well gas"), Buyer agrees to take and purchase from Seller, and Seller agrees to sell and deliver to Buyer, under this agreement (in addition to the quantities provided for above in this Article II such daily quantity of such oil well gas as, in Seller's judgment, Seller has available for sale up to the greater of (i) 5,000 Mef or (ii) [JEP] six and two-thirds (6⅔) percent of the maximum daily take as defined in Section 4 above, at the time in effect.

Buyer further agrees to use its best efforts, having regard to the capacity of Buyer's facilities, to take such additional quantities of oil well gas as Seller from time to time may have available for delivery hereunder. If, however, Buyer is unable to take such quantity as will avoid the flaring of gas, or the reduction of Seller's oil well allowables, then Buyer shall, upon Seller's request, release all oil well gas from the provisions of this agreement.

If Seller sells oil well gas to Buyer hereunder, Buyer will lay and construct, with the approval of Seller, the necessary gathering lines, compressors and all other equipment necessary for it to take and receive the oil well gas into its gathering system, regardless of the quantity of such gas available in any particular well or of the pressure

at which such oil well gas is produced. Seller agrees to reimburse Buyer at monthly intervals for the actual ex-
[fol. 108] penses (including a reasonable amount for overhead) incurred by Buyer in connection with the operation of such lines, compressors and equipment for the gathering and compressing of the oil well gas purchased under this Section 8, together with a reimbursement for depreciation or amortization upon the construction costs of such lines, compressors and facilities at a reasonable rate having due regard for Seller's available oil well gas reserves, and a payment sufficient to give Buyer a six per cent (6%) return on Buyer's actual investment in constructing such lines, compressors and equipment. Buyer shall keep an accurate and separate record of its costs and expenses incurred in this connection and will render Seller monthly statements showing in detail the amount and nature thereof. The payment by Seller of the amount due to Buyer under the terms of this Section 8 pursuant to such statement shall not preclude Seller from challenging the accuracy thereof, and Seller shall have the right at all reasonable times to inspect and audit Buyer's books and records pertaining to such costs and expenses in order to determine the accuracy of such statements. Should Seller not desire to reimburse Buyer as provided in this paragraph, then Buyer, upon request of Seller, shall either release all oil well gas from the obligations of this agreement or shall have the right at its option to take and purchase all such oil well gas at Buyer's expense. [JEP]

Seller shall have the right to take or to sell to others the oil, condensate and other liquid hydrocarbons recovered by Seller in its separators or traps located at or near the wellhead, and Buyer shall deliver to Seller, as Seller may direct, all liquid hydrocarbons recovered by Buyer at the field compression facilities from the oil
[fol. 109] well gas purchased under this Section 8.

SECTION 9. Buyer shall notify Seller (or such representative as Seller may from time to time designate in writing) in writing or by telegram or orally in person or by telephone or radio, prior to the commencement of delivery of gas hereunder of the rate at which Buyer elects

to take gas, and shall so notify Seller of each change in such rate as far in advance as is practicable. Seller shall fix and change the rate of delivery of gas to conform as closely as practicable with each such notice. Buyer shall, as soon as feasible, notify Seller as to the times and amounts of any differences between the daily quantities which Buyer elected to take and the quantities which Seller delivered.

Article III.

(Seller's Leases and Facilities.)

SECTION 1. Seller shall use due diligence to maintain its leaseholds and its interests therein in the field, except those which in Seller's judgment are of no substantial value; provided, however, that Seller shall not be liable to Buyer if by reason of inadvertence, Seller or the operator in charge of such lease, shall fail to maintain any such leasehold or interest therein.

Seller shall have the right to pool or unitize any of its leases with other leases of Seller and/or others in the Field and to alter or reform any such units at Seller's sole discretion.

[fol. 110] SECTION 2. Seller agrees to operate and maintain its wells and leases in such manner as would a reasonably prudent operator in similar circumstances, so as to deliver gas in accordance with the provisions hereof, provided, however, that Seller shall not be liable to Buyer in damages by reason of Seller's failure to deliver gas hereunder unless gas which may be legally produced is at the time available from the lands, leases and interests therein covered hereby in excess of the quantities of gas required by Seller for its field operations, which are hereby reserved; and provided, further, that Seller shall not be obligated to maintain or operate any well when in Seller's judgment it would be uneconomical for Seller to do so, or to operate any well so as to produce a quantity of gas in excess of the quantity which said well can produce under good operating practices and applicable governmental regulations.

SECTION 3. Seller shall maintain and operate at each of its wells, when necessary in order to deliver gas of the quality specified in Article IX hereof, a standard gas-oil separator, or other equipment at least as efficient, to separate the liquid hydrocarbons and other fluids and foreign matter from the gas delivered hereunder. Seller shall operate such separators in such manner as to separate, recover or extract oil, condensate, and other liquid hydrocarbons and fluids from the gas; and all such products so separated, extracted and recovered by Seller shall be and remain the property of Seller.

SECTION 4. Seller and Buyer agree to cooperate in the making of nominations for well allowables sufficient to cover the daily quantities of gas which, from time to [fol. 111] time, Buyer may elect and has the right to take hereunder; provided, that Seller shall never be required to produce its wells in a manner that, in Seller's opinion, will constitute waste or will injure such well or wells or the reservoir, or to produce such wells at rates in excess of those permitted by applicable rules, regulations or orders of governmental authority.

SECTION 5. Seller agrees, at Buyer's request and from time to time, to keep Buyer informed of all available information with respect to Seller's development and production operations in said Field to the extent that such information is relevant to a determination of Buyer's and Seller's obligations hereunder.

SECTION 6. If, in Seller's judgment, the amount payable hereunder for gas delivered from any of Seller's wells shall be less than Seller's cost of operating such well or wells and its facilities necessary to deliver gas hereunder from such well or wells, Seller may on six months notice cancel and terminate this agreement as to any such well or wells.

SECTION 7. Seller reserves the right and option to extract, or to cause to be extracted, in a plant located in or near the Field, the liquid hydrocarbons contained in the gas, subject to this agreement, in addition to those which may be recovered by the separators installed by Seller

in accordance with the provisions hereof. All liquid hydrocarbons so extracted shall belong to Seller. In the event that Seller exercises such option, the point of delivery of gas hereunder shall, in lieu of the several points of de- [fol. 112] livery provided for elsewhere herein, be a point of connection between the facilities of the plant in which Seller is extracting or causing to be extracted such liquid hydrocarbons and the facilities of Buyer located at or near the tail gate of said plant. In such event also, if there is any gathering tax imposed upon Seller by virtue of Seller's exercise of such option, it is agreed that Buyer will reimburse Seller for three-fourths of the amount of such tax.

Article IV.

(Buyer's Facilities.)

SECTION 1. Buyer agrees to maintain in good condition and to operate its existing gathering lines, compressors, meters and other facilities and to construct, maintain and operate any additional facilities necessary for the taking of gas hereunder.

SECTION 2. Seller, to the extent it may lawfully do so, hereby grants to Buyer (a) appropriate rights on Seller's lands and leaseholds for the construction, operation, maintenance, repair and removal of Buyer's pipelines and other facilities, together with rights of ingress and egress, and (b) the right to construct, operate, maintain, repair and remove measuring and receiving facilities on Seller's lands or leases subject hereto.

Article V.

(Measuring and Testing.)

SECTION 1. MEASURING EQUIPMENT: At each point of delivery, Buyer shall provide an orifice meter [fol. 113] of standard type, constructed and installed in accordance with the applicable specifications (for installations with either flange taps or pipe taps as Buyer determines to be appropriate) contained in Report No. 3 of the Gas Measurement Committee of the American Gas

Association, published April 1955, reprinted with revisions January 1956 (hereinafter called "Report No. 3"), suitable for the measurement of gas in accordance with Report No. 3. Buyer shall install such other instruments and equipment as are necessary to provide information for the measurement of gas and computation of volumes of gas.

SECTION 2. INSPECTIONS AND TESTS: Buyer shall read the meters and charge the charts daily or at such other intervals as may be mutually agreed upon. Upon request of Seller, Buyer will submit to Seller for checking and calculation, the records and charts from Buyer's metering equipment, together with Buyer's calculations based thereon. Such records, charts and calculations shall be returned to Buyer within 15 days after receipt thereof by Seller, after which the same shall be kept on file for the mutual use of both parties for a period of three years.

Seller may, at its option and expense, install and operate meters, instruments and equipment of standard type to check Buyer's meters and equipment, but the measurement of gas for the purposes hereof shall be by Buyer's meters only, except as hereinafter specifically provided to the contrary.

At least once each 35 days, on the date as near the first of each month as practicable, Buyer shall calibrate its meters and recording instruments and Seller, if it has [fol. 114] installed check meters or other recording instruments, shall at the same time calibrate its meters and instruments. Each party shall give notice to the other of the time of all tests of metering equipment so that the other party may conveniently (but at its expense) have its representative present thereat. The cost of regular tests shall be borne by the party who owns the meter.

The meters, instruments and equipment installed by either party shall be subject to inspection by the other at all reasonable times, and either party may request that a special test be made of the other's meters or instruments. If the percentage of inaccuracy of the equipment in question shall be found to be less than 2%, then the cost of such special test shall be borne by the party requesting the test.

If upon any test a meter is found to be inaccurate, it shall be restored to accuracy. If the percentage of inaccuracy of any metering equipment is found to be in excess of 2%, previous readings of such equipment shall be corrected for any period which is definitely known or agreed upon, but in case such period is not so known or agreed upon, such correction shall be made for a period covering the last half of the period since the last test, but in no event for a period exceeding 15 days.

Any error resulting from the calculation of chart records shall be corrected promptly upon detection if either party notifies the other of such error within six months following the expiration of the month in which such error was made.

[fol. 115] If for any reason meters are out of service or out of repair so that the amount of gas delivered cannot be ascertained or computed from the readings thereof, the amount of gas delivered during such period shall be estimated and agreed upon by the use of the first of the following methods which is feasible: (a) by using the registration of any check measuring equipment if installed and accurately registering, (b) by correcting the error if the percentage of error is ascertained by calibration, test or mathematical calculation, or (c) by estimating the quantity delivered by reference to actual deliveries during preceding periods under similar conditions when the equipment in question was registering accurately.

Article VI.

(Unit of Volume and Basis of Measurement.)

The unit of volume for all purposes of this agreement shall be 1,000 cubic feet of gas. A "cubic foot of gas" shall be the amount of gas necessary to fill a cubic foot space when the gas is at a temperature of 60° F. and an absolute pressure of 15.025 pounds per square inch.

Volumes shall be computed in accordance with the instructions for computing the flow of gas through orifice meters contained in Report No. 3, using the applicable orifice flow constants, and using the specific gravity method prescribed by paragraph (72) for the determination of

supercompressibility. In the event the viscosity, specific gravity or temperature of the gas are not within the variations provided in paragraph (62) of Report No. 3, the ap- [fol. 116] plicable factor Fr shall be calculated by such method as may be mutually agreed upon.

Volumes shall be corrected for temperature and specific gravity as provided below.

The flowing temperature of the gas shall be determined by means of a recording thermometer of standard manufacture and the arithmetic average of the 24 hour record shall be the temperature at which such gas was delivered during such day. Volumes shall be corrected for each degree of variation in the average temperature from 60° F.

The specific gravity of the gas shall be determined by a recording gravitometer of standard manufacture except that if neither party considers it necessary to install a recording gravitometer, spot tests shall be made with an Edwards type gas balance, or by such other method as shall be mutually agreed upon. If a recording gravitometer is used, the arithmetic average of the 24 hour record shall be the specific gravity of the gas for such day. If the spot test method is used, the specific gravity shall be determined at least once each 35 days on a day as near the first of each month as practicable, or as often as may be found necessary in practice, and the results obtained from each such test shall be the specific gravity of the gas delivered during such month and until the next test is made. Volumes shall be corrected for each 0.001 variation from 1.000.

In determining the volume of gas delivered during a daily period, the orifice chart integrator shall be used in reading the meter chart, except that the inspection method [fol. 117] shall be used if the chart cannot be read with reasonable accuracy by the use of such integrator.

Article VII.

(Delivery Point.)

The point of delivery of gas from each of Seller's wells covered hereby shall be at the wellhead if no separator is installed, or at the outlet side of any separator installed by Seller, in accordance with the provisions of Section 3 of Article III, to separate the liquids from said well.

As between the parties hereto, Seller shall be in the control and possession of gas and responsible for any injury or damage caused thereby until the same shall have been delivered to Buyer, after which delivery Buyer shall be deemed to be in possession and control thereof and responsible for any injury or damage caused thereby. The exact point at which delivery shall be deemed to be made and at which title to such gas shall pass from Seller to Buyer, shall be the flange or weld connecting the facilities of Seller with those of Buyer.

Article VIII.

(Delivery Pressure and Compression.)

All gas delivered by Seller to Buyer hereunder (except gas purchased under the terms of Section 8 of Article II and except such gas as Buyer elects to take at a lesser pressure) shall be delivered at a pressure of not less than [fol. 118] one thousand fifty (1050) psig, so long as the natural flowing pressure of Seller's wells is sufficient to enable Seller to make delivery at such pressure. However, if the natural flowing pressure of any or all of Seller's wells shall be insufficient to permit gas from such wells to enter Buyer's transmission facilities at the pressure at which such facilities shall at the time be operated (not, however, in excess of an initial pressure of one thousand (1,000) psig), or in the event that Seller shall have installed a liquid recovery plant as provided in Section 7 of Article III and shall deliver gas to Buyer at a pressure of less than one thousand (1,000) psig, then in either event Buyer shall install, operate and maintain facilities in said Field to compress gas delivered to it hereunder prior to its introduction into Buyer's facilities.

In the event Buyer has heretofore installed or hereafter installs compression facilities as aforesaid, then Buyer shall operate the same for the compression of gas delivered hereunder from the wells for which such facilities were installed during the remainder of the term of this agreement, and shall provide such additional facilities, if any, as may be necessary in order for Buyer to take gas hereunder; provided, however (except with respect to oil well

gas purchased under Section 8 of Article II), that in the event the natural flowing pressure of any such well will not permit the delivery of gas into the intake or suction side of such field compression facilities at a pressure of at least 500 psig, then Buyer, at its option exercisable on three months written notice to Seller may cancel and terminate this agreement as to any such well.

[fol. 119] The price payable for gas compressed by Buyer as provided above in this Article VIII shall be reduced as provided in Article X, Section 1.

Article IX.

(Quality of Gas.)

Seller agrees that the gas delivered hereunder shall be merchantable gas and will upon delivery—

(a) be commercially free of objectionable substances, including dust, solids, liquids, gums and gum forming constituents;

(b) not contain more than 200 grains of sulphur, or 15 grains of hydrogen sulphide, per Mcf;

(c) have a gross BTU content of not less than 950 per cubic foot.

The sulphur content and hydrogen sulphide content shall be determined by approved standard methods generally in use in the natural gas industry. Buyer shall not be obligated to purchase any gas which does not meet the minimum quality specifications set out herein.

The BTU content shall be determined by joint tests made by taking samples of the gas at the points of delivery and determining the BTU content by means of a standard type recording calorimeter, or by such other method as may be mutually agreed upon. If a recording calorimeter is used, the monthly average of the daily readings obtained [fol. 120] shall be corrected to the basis of measurement provided in Article VI, and corrected from a saturated basis to the moisture content of the gas delivered.

Article X.

(Price, Billing and Payment.)

SECTION 1. (Price) Subject to the further provisions of this Article X, Buyer agrees to pay Seller for each Mcf of gas delivered or for which payment is due hereunder:

(a) during the first five contract years—20c;

(b) during the second five contract years—21c;

(c) during the third five contract years—22c;

(d) during the remaining five contract years—23c.

If Buyer installs and operates compression facilities as provided in Article VIII, the price of all gas so compressed shall be reduced by ½c per Mcf.

SECTION 2. (Billing and Payment) On or before the 20th day of each calendar month Buyer shall deliver to Seller a statement of the quantity of gas delivered during the previous calendar month, the amount Buyer requested and the amount Seller delivered on each day during such month, and the amount of money due, accompanied by payment of the amount due for gas delivered during such previous calendar month.

Should Buyer fail to pay any amount when due, interest thereon shall accrue at the rate of 6% per annum from the date when due until paid. If any such [fol. 121] failure continues for 60 days, Seller may suspend delivery of gas, but the exercise of such right shall be in addition to any other remedy available to Seller.

Each party shall have the right, at reasonable hours to examine the charts, books and records of the other party to the extent necessary to verify the accuracy of any statement, charge, or computation hereunder. If such examination reveals an inaccuracy, the necessary adjustment shall be promptly made.

Article XI.

(Warranty of Title.)

Seller warrants the title to all gas delivered hereunder. Seller further represents and warrants that it will pay

and satisfy, or make provision for the payment and satisfaction of, any and all claims of every nature whatsoever in, to or in respect of gas delivered hereunder; and Seller hereby agrees to indemnify Buyer against all suits, judgments, claims, demands, causes of action, costs, losses and expenses arising out of or in any way connected with any adverse legal claims to the gas delivered hereunder if notified thereof by Buyer.

Buyer assumes no obligation whatever to any royalty owner or to the owner of any other interest of any kind in any gas delivered hereunder, and Seller shall pay all such royalties or other interests upon or in respect of such gas.

[fol. 122] Article XII.

(Force Majeure.)

In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, other than to make payments due hereunder, it is agreed that, on such party giving notice and reasonably full particulars of such force majeure in writing or by telephone (followed by written confirmation) or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period; and such cause, except as hereinafter provided, shall as far as possible be remedied with all reasonable dispatch.

The term "force majeure" shall mean acts of God, orders, rules and regulations of governmental authority, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades insurrections, riots, epidemics, landslides, lightning, earthquakes, fires storms floods washouts arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for maintenance of or making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure

of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due [fol. 123] diligence such party is unable to prevent or overcome; such term shall likewise include the inability of either party to acquire, or delays on the part of such party in acquiring at reasonable cost and by the exercise of reasonable diligence, servitudes, rights of way grants, permits, permissions, licenses, materials or supplies which are required to enable such party to fulfill its obligations hereunder.

It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

Notwithstanding the provisions of the first paragraph of this Article XII, above, Buyer shall not be obligated to give notice with respect to an event of force majeure caused by the breakdown or failure to operate of Buyer's field compressors, but Buyer shall remedy such failure as soon as practicable.

Article XIII.

(Arbitration.)

If any controversy arises between the parties with respect to Seller's deliverability under Section 5 of Article II hereof, such controversy (only those elements which are in dispute) shall be submitted to and determined by a board of three arbitrators.

[fol. 124] Either party may notify the other in writing of its desire to have arbitration and of the name of the arbitrator selected by the party giving such notice. Within 20 days after receipt of such notice, the party receiving the same shall select the second arbitrator and notify the party giving notice of the name of such second arbitrator. If the party receiving such notice shall fail to

name a second arbitrator, the party giving such notice shall name a second arbitrator. If the two arbitrators so named shall fail within 20 days after the appointment of the second arbitrator to agree upon and select a third arbitrator, then upon written application by either party the third arbitrator shall be appointed by the person who is then Chief Judge of the United States Court of Appeals for the Fifth Circuit.

The three arbitrators shall be reputable independent consulting geologists or petroleum engineers. No person so selected or appointed as an arbitrator shall be in the regular salaried employ of either of the parties or of any affiliate of either such party.

The arbitrators shall fix a reasonable time and place for hearings, at which each party may submit such evidence as it may see fit, and the parties hereby expressly waive the rules of evidence which would apply in cases at law or in equity and agree that the arbitrators may establish their own rules of procedure and evidence. The decision of the arbitrators shall be made within 30 days, or such longer period as may be required in unusual circumstances, after the conclusion of any hearing. The decision of the arbitrators shall be in writing, signed by the arbitrators [fol. 125] or a majority of them, and shall be final and binding upon the parties.

The arbitrators shall be vested with all powers conferred by the laws of the State in which the field is located. If final arbitration is not accomplished as aforesaid, then this agreement for the submission to arbitration shall be enforced by appropriate proceedings under such law as may be applicable.

In their decision, arbitrators shall be guided by the provisions of this agreement applicable to the settlement and determination of the matter to be arbitrated.

Each party shall pay the cost and expenses of the arbitrator provided to be selected by it and of counsel, witnesses and others acting for it. All other costs of arbitration shall be divided equally between the parties.

This arbitration clause shall apply only when the deliverability of Seller's wells shall be questioned during intervals between official deliverability tests made as pro-

vided elsewhere herein; and it is not the purpose of this Article to permit either party to question the accuracy of such a test at the time it is made pursuant to the requirements of the Mississippi Oil and Gas Board.

Article XIV.

(Taxes.)

The term "taxes" as used herein shall mean any tax (other than ad valorem, income, or excess profits taxes), [fol. 126] license, fee or charge now or hereafter levied, assessed or made by any governmental authority on the gas itself or on the act, right, or privilege of production, severance, gathering, transportation, handling, sale or delivery of gas which is measured by the volume, value or sales price of the gas in question; provided, however, that the term "Tax" shall not be deemed to include any general franchise tax imposed on corporations on account of their corporate existence or on their right to do business within the state as a foreign corporation.

Seller agrees to pay or cause to be paid all taxes and assessments imposed upon Seller with respect to the gas delivered hereunder prior to its delivery to Buyer. Buyer agrees to pay or cause to be paid all taxes and assessments imposed upon Buyer with respect to the gas delivered hereunder after its receipt by Buyer. Neither party shall be responsible or liable for any taxes or other statutory charges levied or assessed against any of the facilities of the other party used for the purpose of carrying out the provisions of this contract.

All taxes in effect on the date of execution hereof, up to the respective effective rates thereof on said date, imposed on Seller with respect to the gas delivered hereunder, shall not be considered as "new, additional or increased taxes" under the following provisions of this Article.

In the event that any new, additional or increased taxes are hereafter lawfully imposed upon and paid by Seller with respect to the gas delivered hereunder, Buyer agrees to reimburse Seller for three-fourths (¾) of the amount [fol. 127] of any such new, additional or increased taxes so

paid by Seller or which Seller under contractual or legal obligation pays to or for the person or company on which such taxes are levied.

Article XV.

(Effective Date and Term.)

Subject to the other provisions hereof, this agreement shall be and remain in full force and effect for a term of twenty (20) years from and after September 3, 1957.

Seller agrees to take all necessary steps to obtain the necessary authority from the Federal Power Commission, in form acceptable to Seller, to commence deliveries to Buyer on September 3, 1957, under the terms of this agreement.

Article XVI.

(Governmental Regulation.)

Subject to the provisions of Article XV, this agreement shall be subject to all valid orders, rules and regulations of any regulatory authority having jurisdiction and shall be construed in accordance with the laws of the State of Mississippi.

[fol. 128]

Article XVII.

(Assignability.)

This agreement, and all of the stipulations, terms and conditions thereof, shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto, and shall be binding upon any purchaser of the lands, leases, interests therein, or gas at any time covered hereby, and Seller agrees, on behalf of itself and its successors and assigns, that the obligations herein imposed upon Seller shall extend to and run with said lands and leases (except such thereof as may have been released from this agreement), and shall be construed to be and to have the force and effect of a real obligation and covenant, easement and servitude running with the land and leases and property at any time covered thereby; no

sale or transfer of Seller's lands, leases, or interests therein shall be made unless the assignment and transfer shall provide that the purchaser or transferee shall be bound by all the terms and provisions of this agreement, insofar as the same shall affect or relate to the property or interest sold or transferred.

No such sale, sublease or transfer shall be binding upon Buyer unless and until an executed copy of the instrument effecting said sale or transfer is furnished Buyer.

[fol. 129] Article XVIII.

(Miscellaneous.)

(a) No waiver by Buyer or Seller of any default of the other hereunder shall operate as a waiver of any subsequent default whether of a like or different character.

(b) All notices hereunder, except those specifically provided for under other provisions hereof, shall be deemed duly given if in writing and sent by postpaid registered or certified mail addressed to the respective parties at the addresses stated below or such other addresses as they shall respectively hereafter designate in writing from time to time:

Seller:

Sun Oil Company,
Rio Grand National Building,
Dallas 21, Texas.

Buyer:

Southern Natural Gas Company,
P. O. Box 2563,
Birmingham 2, Alabama.

[fol. 130] In Witness Whereof, this agreement has been executed in four originals as of the date first above writ-

ten by Seller and by Buyer, by their respective officers thereunto duly authorized. [JEP, JMS]

SUN OIL COMPANY,

By J. E. PRENDERGAST, [GBB, JEP],
Agent and Attorney in Fact.

SOUTHERN NATURAL GAS COMPANY,

By JOHN M. STARKE,
(John M. Starke),
Vice President.

Attest:

J. S. CONLON,
Asst. Secretary.

State of Texas,
County of Dallas. ss.

Before the undersigned officer in and for said State and County duly authorized to administer oaths and to take acknowledgments to deeds, personally came and appeared J. E. Prendergast, Agent and Attorney in Fact of Sun Oil Company, a corporation of the State of New Jersey, who acknowledged to and before me that for and on behalf of said corporation he signed, executed and delivered the foregoing instrument as of the date therein written as the act and deed of said corporation, he being by said corporation duly authorized to do so.

Given under my hand and seal of office this 31st day of July, A. D. 1957.

KATHERINE LOVETT,
(Katherine Lovett),
Notary Public.

[fol. 131] State of Texas,
County of Harris. ss.

Before the undersigned officer in and for said State and County duly authorized to administer oaths and to take acknowledgments to deeds, personally came and ap-

peared John M. Starke, a Vice President of Southern Natural Gas Company, a corporation of the State of Delaware, who acknowledged to and before me that for and on behalf of said corporation he signed, executed and delivered the foregoing instrument as of the date therein written as the act and deed of said corporation, he being by said corporation duly authorized to do so.

Given under my hand and seal of office this the 31st day of July, A. D. 1957.

MARY L. SHORT,
(Mary L. Short),
Notary Public.

EXHIBIT "A" TO GAS RATE SCHEDULE No. 87

Agreement between Sun Oil Company and Southern Natural Gas Company Production Units in Gwinville Field, Jefferson Davis County, Mississippi

Recorded in Records of
Jefferson Davis County,
Mississippi

Gwinville Gas Unit No.	Date of Declaration of Unit	Book	Page No.	Sun Oil Company's Interest
1	12-23-47	26	214	.008789
2	12-23-47	26	215	.015625
3	12-23-47	26	217	.022367

[fol. 132]

Recorded in Records of
Jefferson Davis County,
Mississippi

Gwinville Gas Unit No.	Date of Declaration of Unit	Book	Page No.	Sun Oil Company's Interest
4	1-16-48	26	308	.242188
5	12-23-47	26	218	.254883
6	12- 4-47	27	417	.129766
7	3-17-48	31	94	.440625
8	12-23-47	26	220	.156250
11	6-16-48	29	262	.318301
12	12-23-47	26	222	.355470
13	3-15-48	29	78	.394731
15	1-20-48	27	39	.250570
18	1-16-48	26	311	.687500
19	1-16-48	26	313	.062500
20	9-25-47	26	223	.375000
21	3- 1-48	29	421	.159516
22	12- 4-47	27	416	.130039
41	1- 3-50	37	298	.021750
42	2-10-48	28	153	.5033095
47	9- 9-48	31	147	.406250
53	3-13-50	38	75	094840

[fol. 133]

BEFORE THE FEDERAL POWER COMMISSION

Received Oct. 10, 4 05 PM '57.

FPC GAS RATE.
Schedule No. 87.
Supplement No. 1.

Filing Date: 10-10-57.
Effective Date: Suspended.

Sun Oil Company
Southwest Division
Rio Grande National Building
P. O. Box 2880
Dallas 21, Texas
Natural Gas Department

S. M. Gladney
Manager
T. F. Hill
Assistant Manager

October 9, 1957

Mr. J. H. Gutride, Secretary
Federal Power Commission
Washington 25, D. C.

Re: Sun Oil Company (Southwest Division) F. P. C.
Gas Rate Schedule No. 55.

Dear Sir:

By letter order dated September 12, 1957, the Commission, acting through its Acting Secretary, purported to reject Sun Oil Company's application for a certificate of public convenience and necessity filed with the Commission on August 13, 1957, in Docket No. G-13059 and [fol. 134] also purported to reject Sun Oil Company's related gas rate schedule which was likewise filed with the Commission on August 13, 1957. These filings by Sun Oil Company are applicable to its sale of gas to Southern Natural Gas Company under a contract dated August 1,

1957, covering certain properties in the Gwinville Field, Jefferson Davis County, Mississippi.

The Commission erred in said letter order of September 12, 1957, and Sun Oil Company is seriously aggrieved thereby and is filing with the Commission simultaneously herewith an Application for Rehearing of said letter order. However, in order that Sun Oil Company may not be further penalized by the erroneous order of the Commission, Sun Oil Company herewith submits said contract of August 1, 1957, together with other documents, in accordance with Section 154.94 of the Commission's Regulations, as a change in its F. P. C. Gas Rate Schedule No. 55.

There are submitted herewith in accordance with Section 154.94 of the Commission's Regulations the contract of August 1, 1957, a comparative statement of sales and revenues for two successive twelve months periods, and a statement in support of the adjustment in price contemplated by the contract of August 1, 1957. This letter and the enclosures are submitted in triplicate.

The adjustment in price contemplated by the contract of August 1, 1957, is to be effective on and after September 3, 1957. It is requested, because of the circumstances which have caused the filing at this time and in this form, that the Commission waive the notice requirements, in accordance with Section 4 (d) of the Natural Gas Act and Section 154.98 of the Commission's Regulations, so that such price [fol. 135] adjustment may become effective on September 3, 1957.

A copy of this letter and copies of the enclosures have been mailed to Southern Natural Gas Company.

With regard to this filing, address communications to: G. B. Bennett, P. O. Box 2880, Dallas, Texas; and H. D. Coe, Suite 1208, 1700 "K" Street, N. W. Washington 6, D. C.

Since we believe that the Commission, under both the Natural Gas Act and its Regulations, is in error in its above mentioned letter order of September 12, 1957, in, among other things, regarding Sun Oil Company's above

mentioned contract with Southern Natural Gas Company as a change in rate schedule, this filing is made under protest and under the compulsion of the letter order of September 12, 1957, and the Commission's Regulations. This filing is made without admitting the validity of said order and without prejudice to the rights of Sun Oil Company to contest the validity of said order. In addition, this filing is made without admitting that the Commission has jurisdiction over either Sun Oil Company or the subject matter of this filing, and without prejudice to the rights of Sun Oil Company to contest the jurisdiction of the Commission over Sun Oil Company and the subject matter of this filing.

Yours very truly,

SUN OIL COMPANY (SOUTHWEST DIVISION),

By G. G. BENNETT,
(G. B. Bennett),
Superintendent Natural Gas Department.

BEFORE THE FEDERAL POWER COMMISSION

Received Oct. 10, 4:05 P.M., '57.

Sun Oil Company
Dallas, Texas

Gwinville Field—Jefferson Davis County, Mississippi
Sales of Southern Natural Gas Company

	(Compressed)			(Non-Compressed)		
Period	MCF Sold 16.7#	Price Per MCF 16.7#	Total Value	MCF Sold 16.7#	Price Per MCF 16.7#	Total Value
Sept., 1956	375,613	.07683726¢	$28,861.07	160,629	.08183726¢	$13,145.44
Oct., 1956	358,878	.07683726¢	27,575.20	135,173	.08183726¢	11,062.19
Nov., 1956	354,646	.07683726¢	27,250.03	133,925	.08183726¢	10,960.06
Dec., 1956	349,628	.07683726¢	26,864.46	151,119	.08183726¢	12,367.16
Jan., 1957	332,174	.07683726¢	25,523.34	162,489	.08183726¢	13,297.65
Feb., 1957	313,714	.07683726¢	24,104.92	144,513	.08183726¢	11,826.55
Mar., 1957	331,490	.07683726¢	25,470.78	134,539	.08183726¢	11,010.30
Apr., 1957	304,069	.07683726¢	23,363.83	95,234	.08183726¢	7,793.69
May, 1957	278,341	.07683726¢	21,386.96	97,395	.08183726¢	7,970.54
June, 1957	274,659	.07683726¢	21,104.04	110,399	.08183726¢	9,034.75
July, 1957	274,368	.07683726¢	21,081.69	129,381	.08183726¢	10,588.19
Aug., 1957	274,368*	.07683726¢	21,081.69	129,381*	.08183726¢	10,588.19

	(Compressed)			(Non-Compressed)		
Period	MCF Sold 15.025 #	Price Per MCF 15.025 #	Total Value	MCF Sold 15.025 #	Price Per MCF 15.025 #	Total Value
Sept., 1957	375,613*	19.5¢	$73,244.54	160,629*	20.0¢	$32,125.80
Oct., 1957	358,878*	19.5¢	69,981.21	135,173*	20.0¢	27,034.60
Nov., 1957	354,646*	19.5¢	69,155.97	133,925*	20.0¢	26,785.00
Dec., 1957	349,628*	19.5¢	68,177.46	151,119*	20.0¢	30,223.80
Jan., 1958	332,174*	19.5¢	64,773.93	162,489*	20.0¢	32,497.80
Feb., 1958	313,714*	19.5¢	61,174.23	144,513*	20.0¢	28,902.60
Mar., 1958	331,490*	19.5¢	64,640.55	134,539*	20.0¢	26,907.80
Apr., 1958	304,069*	19.5¢	59,293.46	95,234*	20.0¢	19,046.80
May, 1958	278,341*	19.5¢	54,276.50	97,395*	20.0¢	19,479.00
June, 1958	274,659*	19.5¢	53,558.51	110,399*	20.0¢	22,079.80
July, 1958	274,368*	19.5¢	53,501.76	129,381*	20.0¢	25,876.20
Aug., 1958	274,368*	19.5¢	53,501.76	129,381*	20.0¢	25,876.20

Period	16.7#	MCF 16.7#	Value	16.7#	MCF 16.7#	Value
Sept., 1956	375,613	.07683726¢	$28,861.07	160,629	.08183726¢	$13,145.44
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Dec., 1956	349,628	.07683726¢	26,864.46	151,119	.08183726¢	12,367.16
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May, 1957	278,341	.07683726¢	21,386.96	97,395	.08183726¢	7,970.54
June, 1957	274,659	.07683726¢	21,104.04	110,399	.08183726¢	9,034.75
July, 1957	274,368	.07683726¢	21,081.69	129,381	.08183726¢	10,588.19
Aug., 1957	274,368*	.07683726¢	21,081.69	129,381*	.08183726¢	10,588.19

	(Compressed)			(Non-Compressed)		
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Dec., 1957	349,628*	19.5¢	68,177.46	151,119*	20.0¢	30,223.80
Jan., 1958	332,174*	19.5¢	64,773.93	162,489*	20.0¢	32,497.80
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June, 1958	274,659*	19.5¢	53,558.51	110,399*	20.0¢	22,079.80
July, 1958	274,368*	19.5¢	53,501.76	129,381*	20.0¢	25,876.20
Aug., 1958	274,368*	19.5¢	53,501.76	129,381*	20.0¢	25,876.20

* Estimated

Note: Prices for 12 month period preceding September 1, 1957 include tax reimbursement for increased taxes prior to September 1, 1957.

[fol. 137]

BEFORE THE FEDERAL POWER COMMISSION

Sun Oil Company

F. P. C. Gas Rate Schedule No. 55.

STATEMENT OF REASONS, NATURE AND BASIS FOR PRICE ADJUSTMENT.

Under the provisions of the contract of August 1, 1957, between Sun Oil Company, as Seller, and Southern Natural Gas Company, as Buyer, covering certain properties in the Gwinville Field, Jefferson Davis County, Mississippi, the price to be paid to Sun Oil Company for gas delivered from such properties, on and after September 3, 1957, is 20c per Mcf of gas not requiring compression and 19.5c per Mcf of gas requiring compression. Such prices are to be applied to volumes calculated at a pressure base of 15.025 p.s.i.a.

The provisions of the contract by which the above stipulated prices are determined were arrived at by bargaining at arm's length between the parties and constitute an integral part of the consideration upon which such contract is based. The contract between the parties of August 26, 1947, comprising Sun Oil Company's F. P. C. Gas Rate Schedule No. 55 has expired by its own terms. The initial prices set out in the contract of August 1, 1957, are clearly just and reasonable, particularly in view of the long term of the contract and the nature and location of the gas reserves and properties involved.

The prices set out in the contract as being effective on and after September 3, 1957, do not exceed the market price, market value, or commodity value of gas in the area in [fol. 138] which the properties covered by the contract are situated.

Address All Communications
To The Secretary

BEFORE THE FEDERAL POWER COMMISSION

Federal Power Commission
Washington 25

Mar. 23, 1955

W. E. Warren
P. O. Box 2880
Dallas, Texas

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing.

In the event that any of the documents comprising the listed rate schedules contain provisions for future automatic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the rates being charged June 7, 1954, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's Regulations under such Act as promulgated by this Commission's order No. 174-B. The Act and the Commission's rules require that such changes be filed with the Commission not more than 90 days nor less than 30 days prior to the proposed effective date thereof.

[fol. 139] This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings of orders which have been or may hereafter be made by the Commission

in any proceeding now pending or hereafter instituted by or against your company.

Very truly yours,

LEON M. FUQUAY,
Secretary.

Rate Schedule Designation
Sun Oil Co.
F.P.C.

Description of Document	Date of Letter of Transmittal	Gas Rate Schedule No.	Supplement No.
Contract 8/31/44	9/16/54	52	—
Supp. Agree. 4/3/46	9/16/54	52	1
Supp. Agree. 12/31/48	9/16/54	52	2
Supp. Agree. 8/23/52	9/16/54	52	3
Contract 12/1/51	9/24/51	53	—
Supp. Agree. 12/1/51	9/24/51	53	1
Supp. Agree. 3/20/52	9/24/54	53	2
Letter 6/5/52	9/24/54	53	3
Contract 5/28/47	9/16/54	54	—
Letter 10/19/50	9/16/54	54	1
Letter 11/3/53	9/16/54	54	2
Letter 12/14/53	9/16/54	54	3
Letter 1/8/54	9/16/54	54	4
[fol. 140]			
Contract 8/26/47	9/16/54	55	—
Letter 9/10/53	9/16/54	55	1
Contract 12/13/51	11/22/54	57	—
Letter 1/17/52	11/22/54	57	1
Letter 1/18/52	11/22/54	57	2
Letter 9/16/52	11/22/54	57	3
Contract 9/15/49	9/16/54	58	—
Letter 2/5/51	9/16/54	58	1
Supp. Agree. 7/30/51	9/16/54	58	2
Letter 10/2/51	9/16/54	58	3
Letter 1/15/53	9/16/54	58	4
Letter 3/18/54	9/16/54	58	5
Letter 5/10/54	9/16/54	58	6
Letter 7/26/54	9/16/54	58	7

Rate Schedule Designation
Sun Oil Co.
F.P.C.

Description of Document	Date of Letter of Transmittal	Gas Rate Schedule No.	Supplement No.
Contract 6/23/49	9/16/54	59	—
Letter 6/28/52	9/16/54	59	1
Letter 5/6/54	9/16/54	59	2
Contract 2/26/54	9/16/54	60	—
Supp. Agree. 5/21/54	9/16/54	60	1
Contract 9/15/49	9/16/54	61	—
Supp. Agree. 7/30/51	9/16/54	61	1
Letter 1/15/53	9/16/54	61	2
Contract 5/7/51	9/16/54	62	—
Supp. Agree. 12/14/49	9/16/54	62	1
Contract 11/1/45	11/22/54	63	—
Letter 11/1/45	11/22/54	63	1
Letter 11/1/45	11/22/54	63	2
Letter 1/26/50	11/22/54	63	3
Supp. Agree. 6/29/50	11/22/54	63	4
Letter 6/29/50	11/22/54	63	5
[fol. 141]			
Contract 11/13/53	11/22/54	64	—
Assignment 2/12/54	11/22/54	64	1
Letter 5/19/54	11/22/54	64	2

Address All Communications
To The Secretary

BEFORE THE FEDERAL POWER COMMISSION

100-2 Gas Cor.
Federal Power Commission
Washington 25

Jun. 6, 1955

Sun Oil Company
Rio Grande National Building
Dallas 2, Texas

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing, that

notice is hereby waived to permit such rate schedule to be effective as of the date of filing or such later date as requested, as shown below.

In the event that any of the documents comprising the listed rate schedules contain provisions for future automatic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provisions, your attention is directed to the fact that such provisions, when invoked to change the effective rates and [fol. 142] charges, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's Regulations under such Act as promulgated by this Commission's Order No. 174-B. The Act and the Commission's rules require that such changes be filed with the Commission not more than 90 nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

By direction of the Commission.

Secretary.

Rate Schedule Designation
Sun Oil Company

Description of Document—Notice of Change of 4/22/55. Tax Increase.

Date of Letter of Transmittal—4/22/55.

F.P.C. Gas Rate Schedule No.—55.
Supplement No.—2.
Effective Date—4/28/55.

RJM:dk
5/31/55

[fol. 143]

BEFORE THE FEDERAL POWER COMMISSION

Received Jul. 5, 3 52 PM '55.

100-2 Gas Cor.
Sun Oil Company
Southwest Division
Rio Grande National Building
Dallas 2, Texas

S. M. Gladney
Manager

T. F. Hill
Assistant Manager

June 28, 1955

Mr. Leon M. Fuquay, Secretary
Federal Power Commission
Washington 25, D. C.

Dear Sir:

By letter dated April 22, 1955, accepted for filing and made effective on April 28, 1955, Sun Oil Company (Southwest Division) filed a change in the charges contained in the contract between Sun Oil Company and Southern Natural Gas Company, dated August 26, 1947, as therein provided for, such increase in charges being required because of the increase in the gas severance tax levied by the State of Mississippi, effective as of April 1, 1955.

It appears that in the preparation of said change in charges the new severance tax applicable to the gas covered by this rate schedule was miscalculated, with the result

that the revised rates effective under the contract as set out in said filing were incorrectly stated, the variance being of a minor nature.

[fol. 144] Accordingly, it is requested that the statement in support of the increased charges attached to said filing dated April 22, 1955, be modified so as to reflect revised charges of 8.1857c per m.c.f. for non-compressed gas (in lieu of the revised charge of 8.183726c per m.c.f. therein stated) and 7.6744c per m.c.f. for compressed gas (in lieu of the revised charge of 7.683726c per m.c.f. therein stated), measured at a pressure base of 16.7 p.s.i.a. It is also requested that the attached comparative statement based on such corrected revised charges be substituted for the comparative statement attached to said filing dated April 22, 1955.

A copy of this letter and enclosure have been mailed to the purchaser.

With regard to this filing, address communications to: B. E. Warren, P. O. Box 2880, Dallas, Texas.

This filing is made under compulsion of the Commission's Order No. 174-B without admitting the validity of such order and without admitting that the Federal Power Commission has jurisdiction over either Sun Oil Company or the subject matter of this filing, and without prejudice to the rights of Sun Oil Company to contest the validity of said order, and without prejudice to its right to contest the jurisdiction of the Commission over the subject matter of this filing.

Yours very truly,

SUN OIL COMPANY (SOUTHWEST DIVISION),

By B. E. WARREN,
(B. E. Warren),
Superintendent, Natural Gas Department.

File No Reply Required (Illegible) (Initials).

[fol. 145]

BEFORE THE FEDERAL POWER COMMISSION

FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY.

(Issued May 28, 1956.)

Docketed May 28, 1956.

100-2 Formal.
United States of America.
Federal Power Commission.

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby, Frederick Stueck and William R. Connole.

In the Matters of:

Howard W. Fleet, et al.
Docket No. G-3275.

M. F. Powers.
Docket Nos. G-4814 thru G-4819, incl.

John A. Barnett.
Docket No. G-5191.

Big Chief Drilling Company.
Docket Nos. G-5218, G-5200 and G-5221.

Havenstrite Oil Company of Texas.
Docket Nos. G-5291 and G-5292.

Shell Oil Company.
Docket No. G-5659.

Baker and Taylor Drilling Company.
Docket No. G-5993.

Amerada Petroleum Corporation.
Docket Nos. G-6319, G-6321 thru G-6324, incl.

[fol. 146] Kerr-McGee Oil Industries, Inc.
Docket No. G-6378.

Joseph I. O'Neil, Jr.
Docket No. G-6393.

Southwestern Exploration Company (a Co-partnership).
Docket Nos. G-6406 and G-6407.

Bass & Vessels, et al.
Docket No. G-6429.

Phillips Drilling Corporation.
Docket No. G-6608.

Sun Oil Company.
Docket Nos. G-6619, G-6620, G-6626 thru G-6640, incl., G-6642 thru G-6656, incl., G-6658 thru G-6664 incl. and G-6670.

Cabot Carbon Company.
Docket No. G-6825.

Hanco Oil and Gas Company, Ltd.
Docket No. G-6950.

Sue Reeder Turner.
Docket No. G-6994.

Gulf Oil Corporation.
Docket Nos. G-7136 thru G-7141, incl., G-7143 thru G-7145, incl., G-7147 thru G-7158, incl.

[fol. 147] Fraley Gas Company.
Docket No. G-7706.

N. B. Hunt.
Docket No. G-7734.

Wiley Page.
Docket No. G-7738.

W. W. Lechner and R. E. Hubbard.
Docket No. G-7755.

G. B. Cree and H. E. Schwartz.
Docket No. G-7761.

H. E. Schwartz, G. B. Cree and Southern Production Company, Inc.
Docket No. G-7762.

Harold Davidor and R. H. Davidor, d.b.a. Davidor & Davidor.
Docket No. G-7768.

Late Oil Company.
Docket Nos. G-7769 and G-7770.

Orville H. Parker, et al.
Docket No. G-7811.

Phil D. Phillips, et al.
Docket No. G-7812.

Clayton A. Woofter, et al. Lease, Roy G. Hildreth, et al., and Roy G. Hildreth, Agent.
Docket No. G-7813.

[fol. 148] H. C. Grady, Jr., and J. R. Graham, Jr.
Docket No. G-7815.

J. D. Caruthers.
Docket Nos. G-7816 and G-7821.

Lisbon Exploration Company, Inc.
Docket No. G-7822.

Malco Refineries, Inc.
Docket No. G-7823.

Cree Oil, H. E. Schwartz and D. E. Williams.
Docket No. G-7824.

H. W. Klein.
Docket No. G-7825.

Charles N. Compton Oil and Gas Co.
Docket No. G-7839.

Seward Butch Martin Oil and Gas Co.
Docket No. G-7840.

Blanton Oil and Gas Co.
Docket No. G-7841.

H. C. Hall Oil and Gas Co.
Docket No. G-7842.

Little Rough Oil and Gas Co.
Docket No. G-7843.

Ben Compton Oil and Gas Co.
Docket No. G-7844.

[fol. 149] Louis C. Quin, H. R. Wofford, Jr., and Arthur F. Graf, Jr.
Docket No. G-7851.

Goliad Corporation.
Docket No. G-7852.

Peerless Oil and Gas Company.
Docket No. G-8083.

Each of the above Applicants has filed an application for a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act, authorizing Applicants to render services as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in their respective applications which are on file with the Commission and open for public inspection.

Applicants produce and sell natural gas for transportation in interstate commerce for resale, as indicated below. Applicants are hereinafter referred to as Applicant.

[fol. 150]

Docket No. G—Location of Field—Buyer.

3275—Denton Gasoline Plant—El Paso Natural Gas Company.

4814 thru 4817, incl., and 4819—Hugoton Field, Kearney County, Kansas—Colorado Interstate Gas Company; Cities Service Gas Company; Kansas-Nebraska Natural Gas Company.

4818—Carthage Field, Panola County, Texas—Texas Gas Transmission Corporation.

5191—Spraberry Trend Area, Midland and Glasscock Counties, Texas—Texas Gas Products Corporation.

5218, 5220, and 5221—Chris Hunt, Hitch Gray and Stanolind-Wiggins Leases in Keyes Field, Cimarron County, Oklahoma—Colorado Interstate Gas Company.

5291 and 5292—Anna Wells and Pembrook Leases in Upton County, Texas—Texas Gas Products Corporation.

Docket No. G—Location of Field—Buyer.

5639—Tubb-Blinberry Field, Lea County, New Mexico—El Paso Natural Gas Company.

6993—Acreage in Lea County, New Mexico—El Paso Natural Gas Company.

6319—Ignacio Field, La Plata County, Colorado—El Paso Natural Gas Company.

6321, 6323 and 6324—Langlie-Mattix Field, Lea County, New Mexico—El Paso Natural Gas Company.

6322—Fields in Lea County, New Mexico—El Paso Natural Gas Company.

6378—Keyes Field, Cimarron County, Oklahoma—Colorado Interstate Gas Company.

6393—Jack Herbert Field, Upton County, Texas—El Paso Natural Gas Company.

6406—Hugoton Field, Haskell, Stanton and Seward Counties, Kansas—Colorado Interstate Gas Company; Northern Natural Gas Company.

[fol. 151]

6407—Greenwood Field, Baca County, Colorado, and Morton County, Kansas—Colorado Interstate Gas Company.

6429—North Sun Field, Starr County, Texas—Tennessee Gas Transmission Company.

6608—Allison Unit Area, San Juan County, New Mexico, and La Plata and Archuleta Counties, Colorado—El Paso Natural Gas Company.

6619—Levelland Field, Hockley County, Texas—El Paso Natural Gas Company.

6620, 6640, 6643, 6645, 6648, 6653, 6655 and 6662—Carthage Field, Panola County, Texas—Texas Gas Transmission Corporation; United Gas Pipe Line Company; Texas Eastern Transmission Corporation; Tennessee Gas Transmission Company; Southern Natural Gas Company.

6626—Mission Valley Field, Victoria County, Texas—Transcontinental Gas Pipe Line Corporation.

Docket No. G—Location of Field—Buyer.

6627—Shield Field, Nueces County, Texas—Transcontinental Gas Pipe Line Corporation.

6628—La Gloria Field, Jim Wells County, Texas—Transcontinental Gas Pipe Line Corporation.

6629—Various Fields in Starr County, Texas—Transcontinental Gas Pipe Line Corporation.

6630—Quinto Creek Field, Jim Wells County, Texas—Transcontinental Gas Pipe Line Corporation.

6631—N. Government Wells Field, Duval County, Texas—Tennessee Gas Transmission Company.

6632—Brayton Field, Nueces County, Texas—Tennessee Gas Transmission Company.

6633—Gyp Hill Field, Brooks County, Texas—Tennessee Gas Transmission Company.

6634—Placedo Field, Victoria County, Texas—Tennessee Gas Transmission Company.

[fol. 152]

6635—Chesterville Field, Colorado County, Texas—Tennessee Gas Transmission Company.

6636—Seeligson Field, Jim Wells County, Texas—Tennessee Gas Transmission Company.

6637—Edinburg Field, Hidalgo County, Texas—Tennessee Gas Transmission Company.

6638—Red Fish Bay Field, Nueces County, Texas—United Gas Pipe Line Company.

6639 and 6642—Cabeza Creek Field, Goliad County, Texas—United Gas Pipe Line Company.

6644—Hordes Creek Field, Goliad County, Texas—United Gas Pipe Line Company.

6646—N. Minoak Field, Bee County, Texas—Texas Eastern Transmission Corporation.

6647—Corpus Christi Channel Field, Nueces County, Texas—Tennessee Gas Transmission Company.

Docket No. G—Location of Field—Buyer.

6649—Payton-Devonian Field, Pecos County, Texas—El Paso Natural Gas Company.

6650—Richard King Field, Nueces County, Texas—Tennessee Gas Transmission Company.

6651—Helen Gohlke Field, Victoria County, Texas—Texas Eastern Transmission Corporation.

6652—Heyser Field, Victoria County, Texas—Tennessee Gas Transmission Company.

6654 and 6664—Delhi Field, Richland Parish, Louisiana—Texas Eastern Transmission Corporation.

6656 and 6660—Jalco Field, Lea County, New Mexico—El Paso Natural Gas Company.

6658—Gwinville Field, Jefferson Davis County, Mississippi—Southern Natural Gas Company.

6659—Langmat Field, Lea County, New Mexico—El Paso Natural Gas Company.

6661—Burnell-North Pettus Field, Karnes County, Texas—United Gas Pipe Line Company.

[fol. 153]

6663—Eumont Field, Lea County, New Mexico—Permian Basin Pipe Line Company.

6670—North Bay City and North Markham Fields, Matagorda County, Texas—Transcontinental Gas Pipe Line Corporation.

6825—Keyes Field, Texas County, Oklahoma—Colorado Interstate Gas Company.

6950—San Juan Basin, Rio Arriba County, New Mexico—El Paso Natural Gas Company.

6994—Acreage in San Juan County, New Mexico—El Paso Natural Gas Company.

7136—Winnsboro Field, Wood County, Texas—Lone Star Gas Company.

7137—Woodlawn Field, Harrison County, Texas—Mississippi River Fuel Corporation.

Docket No. G—Location of Field—Buyer.

7138—Waskom Field, Harrison and Panola Counties, Texas —Arkansas-Louisiana Gas Company.

7139—Lemonville and West Gist Fields, Newton and Jasper Counties, Texas—Texas Eastern Transmission Corporation.

7140—New Ulm Field, Austin County, Texas—Tennessee Gas Transmission Company.

7141—North Lansing Field, Harrison County, Texas—Arkansas-Louisiana Gas Company.

7143—Heyser Field Calhoun County, Texas—Tennessee Gas Transmission Company.

7144—Mustang Island Field, Nueces County, Texas—United Gas Pipe Line Company.

7145—Placedo Field, Victoria County, Texas—Tennessee Gas Transmission Company.

7147—N. McFaddin Field, Victoria County, Texas—United Gas Pipe Line Company.

7148—Harleton (Whelan) Field, Harrison County, Texas —H. L. Hunt.

[fol. 154]

7149—Stowell Field, Chambers County, Texas—Texas Gas Corporation.

7150—Keystone, Waddell and McKee Fields, Winkler County, Texas—El Paso Natural Gas Company.

7151—Jalmat and Blinberry Fields, Lea County, New Mexico—El Paso Natural Gas Company.

7152—Carson Field, Gray County, Texas—Phillips Petroleum Company.

7153—Sweetie Peck Field, Midland County, Texas—El Paso Natural Gas Company.

7154—S. Fullerton Field, Andrews County, Texas—El Paso Natural Gas Company.

7155—Denton Field, Lea County, New Mexico—El Paso Natural Gas Company.

Docket No. G—Location of Field—Buyer.

7156—Waddell, Edwards, Sand Hills, University-Waddell, and Dune Fields, Crane County, Texas—El Paso Natural Gas Company.

7157—Jack Herbert (Penn) Field, Upton County, Texas—El Paso Natural Gas Company.

7158—Arrowhead, Blinberry, Brunson, Drinkard, Hair, S. Hair, McCormick, Paddock and Perose-Skelly Fields, Lea County, New Mexico—El Paso Natural Gas Company.

7706—Fields in Wayne County, West Virginia—United Fuel Gas Company.

7734—Fields in Lea County, New Mexico—El Paso Natural Gas Company.

7738—North Lansing Field, Harrison County, Texas—Arkansas-Louisiana Gas Company.

7755—North Lansing Field, Harrison County, Texas—H. L. Hunt.

7761—East Panhandle Field, Gray County, Texas—Phillips Petroleum Company.

[fol. 155]

7762—West Panhandle Field, Gray County, Texas—Cabot Carbon Company.

7768—North Whiterock Field, Noble County, Oklahoma—Cities Service Gas Company.

7769—Langmat Field, Lea County, New Mexico—El Paso Natural Gas Company.

7770—Eumont Field, Lea County, New Mexico—El Paso Natural Gas Company; Phillips Petroleum Company.

7811—Hugoton Field, Stevens County, Kansas—Northern Natural Gas Company.

7812—Washington District, Calhoun County, West Virginia—Godfrey L. Cabot, Inc.

7813—Glenville District, Gilmer County, West Virginia—Equitable Gas Company.

Docket No. G—Location of Field—Buyer.

7815—East Panhandle Field, Gray County, Texas—Warren Petroleum Company.

7816, 7821 and 7822—Lisbon Field, Lincoln and Claiborne Parishes, Louisiana—Mississippi River Fuel Corporation; Arkansas-Louisiana Gas Company; H. W. Klein.

7823—Ignacia Field, La Plata County, Colorado; Wasson Field, Yoakum County, Texas—El Paso Natural Gas Company; Shell Oil Company; Coltexo Corporation.

7824—West Panhandle Field, Gray County, Texas—Cities Service Gas Company.

7825—Lisbon Field, Claiborne and Lincoln Parishes, Louisiana—Arkansas-Louisiana Gas Company.

7839 and 7844—Sucker Creek Field, Pike County, Kentucky—Kentucky West Virginia Gas Company.

7840—Virgie Field, Pike County, Kentucky—United Fuel Gas Company.

[fol. 156]

7841—Wolfe Creek Field, Martin County, Kentucky—United Fuel Gas Company.

7842—Right Beaver Creek Field, Knott County, Kentucky—Kentucky West Virginia Gas Company.

7843—Johns Creek Field, Floyd County, Kentucky—Kentucky West Virginia Gas Company.

7851—South Porter Field, Karnes County, Texas—United Gas Pipe Line Company.

7852—Live Oak County, Texas—Transcontinental Gas Pipe Line Corporation.

8083—Langmat Pool, Lea County, New Mexico—El Paso Natural Gas Company.

Pursuant to due notice, a public hearing was held in Washington, D. C., on May 21, 1956, respecting the matters involved in and the issues presented by the application. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved

orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision herein pursuant to Section 1.30 (c) (1) of the Commission's Rules of Practice and Procedure.

The Commission FINDS:

(1) Applicant, an independent producer of natural gas, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

[fol. 157] (2) The sale of natural gas hereinbefore described, as more fully described in the application, is made in interstate commerce, subject to the jurisdiction of the Commission, and such sale by Applicant, together with the operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(4) The sale of natural gas by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) A request during the public hearing by Staff Counsel for omission of the intermediate decision procedure under Section 1.30 (c) of the Commission's Rules of Practice and Procedure, was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c) (1) of said Rules.

The Commission ORDERS:

(A) A certificate of public convenience and necessity be and is hereby issued, upon the terms and conditions of this

order, authorizing the sale by Applicant of natural gas in [fol. 158] interstate commerce for resale, together with the operation of any facilities, subject to the jurisdiction of the Commission, used for the sale of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits in this proceeding.

(B) The certificate issued herein shall be deemed accepted and of full force and effect, unless refused in writing and under oath by Applicant within 30 days from issuance of this order.

(C) The certificate is not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act, and the applicable rules, regulations and orders of the Commission.

(D) The grant of the certificate herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Section 154 of the Commission's Rules and Regulations thereunder requiring the filing of rate schedules for the service herein authorized, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objection relating to the operation of any price or related provision in the gas purchase contracts herein involved.

[fol. 159] By the Commission. Commissioner Digby concurring, subject to the statement attached.

LEON M. FUQUAY,
(Leon M. Fuquay),
Secretary.

(Seal)

DIGBY, Commissioner, concurring:

I concur in the order granting a certificate of public convenience and necessity to sell natural gas. I object to any reference in the order concerning the issuance of a cer-

tificate of public convenience and necessity for the facilities of the independent producer or gatherer of gas.

A certificate of public convenience and necessity is neither required nor properly issued for construction and operation of facilities of a producer or gatherer. The action of a majority of this Commission issuing a certificate for facilities is improper for it represents an assertion of power denied to us by Congress.

We have recognized the absence of power over facilities when, in Order No. 174 and Order No. 174-A, we failed to provide any procedure whereby application could be made for a certificate authorizing their construction and operation. We did promulgate procedural rules to enable filing of applications for certificates authorizing a sale or transportation. There was not even a suggestion that at some later time we would authorize or require authorization for construction and operation of facilities.

The action heretofore taken, insofar as it made no provision with respect to facilities, was wholly consistent with the declarations of the Supreme Court in Federal Power [fol. 160] Commission v. Panhandle Eastern Pipe Line Company, 337 U. S. 498, 505; Colorado Interstate Gas Co. v. Federal Power Commission, 324 U. S. 581, 598; Interstate Natural Gas Company v. Federal Power Commission, 331 U. S. 682, 690-691, and Phillips Petroleum Company v. State of Wisconsin, 74 Sup. Ct. 794, 797-798. The language of the Court in these cases is clear and unambiguous. In Federal Power Commission v. Panhandle Eastern Pipe Line Company, supra, the Court stated that the "natural and clear meaning" of production or gathering contained in Section 1(b) of the Act encompassed "the producing properties and gathering facilities of a natural-gas company." In Colorado Interstate Gas Co. v. Federal Power Commission, supra, the Court stated that the production or gathering exemption applies to the "physical activities, facilities and properties used in the production and gathering of natural gas." In Interstate Natural Gas Company v. Federal Power Commission, supra, the Court stated that effect must be given to the exemption of producing and gathering, and indicated clearly that facilities, properties and activities of a producer and gatherer were

exempted. The Court, in Phillips Petroleum Company v. State of Wisconsin, supra, held only that a sale in interstate commerce for resale was not within the exemption of Section 1(b). The discussion with respect to facilities and the recitation of the above-cited cases represents clear recognition of the intended scope and effect of the exemption as regards facilities.

The issue to be resolved is whether the Natural Gas Act requires that a certificate of public convenience and necessity issue for construction and operation of the facilities necessary to effect a sale by a producer or gatherer in inter- [fol. 161] state commerce for resale. The issue is not whether a sale of gas in interstate commerce for resale can be made without facilities. It cannot be doubted that facilities necessary to effect a sale of natural gas in interstate commerce are facilities used in interstate commerce. Recognition of this fact cannot, however, create power in this Commission to issue, much less to require, certificates authorizing construction and operation of such facilities.

[fol. 162]

BEFORE THE FEDERAL POWER COMMISSION

Received Aug. 13, 4 31 PM '57.

100-2 Formal.

G13059.

Official File Copy.

To: Docket RGC.
Init.: GB, DM.
Date 8-14, 9/12.
Central Files.

Sun Oil Company
Southwest Division.
Rio Grande National Building
P. O. Box 2880
Dallas 21, Texas

S. M. Gladney
Manager
T. F. Hill
Assistant Manager

Natural Gas Department

August 12, 1957

Mr. J. H. Gutride, Secretary
Federal Power Commission
Washington 25, D. C.

Dear Sir:

Pursuant to the requirements of Section 154.92 (b) of the Commission's regulations, as amended by Order No. 174-B, there are transmitted herewith for filing as a rate [fol. 163] schedule three copies of a contract between Sun Oil Company (Southwest Division) and the purchaser named below providing for a sale of gas which is proposed to be initiated subsequent to the issuance of Order No. 174-B.

Purchaser—Date of Contract.

Southern Natural Gas Company—August 1, 1957.

Such contract contains the terms and conditions of service and all rates and charges for the sale to be made thereunder. Sun Oil Company has no knowledge with respect to the ultimate point of consumption of the gas to be sold under such contract.

There are also enclosed three copies of a statement showing estimated sales and billing for the first month of service under such contract and showing the proposed date of commencement of service.

A copy of this letter and the enclosures have been mailed to the purchaser.

It is anticipated that the sale of gas under such contract will be initiated promptly upon receipt of disclaimer of jurisdiction or of acceptance of statement of intention to invoke Section 157.28 of the Commission's Regulations, and an application for such disclaimer or for certificate and a statement of intention to invoke Section 157.28 are being filed contemporaneously herewith. Therefore, it is requested that the rate schedule submitted herewith be permitted to be effective on less than 30 days' notice, in accordance with Section 154.98 of the Commission's Regulations. Good cause for such waiver of notice is shown in such statement of intention to invoke Section 157.28, to which reference is here made.

[fol. 164] With regard to this filing, address communications to: G. B. Bennett, Box 2880, Dallas, Texas, and H. D. Coe, Suite 1208, 1700 "K" Street N. W., Washington 6, D. C.

This filing is made under compulsion of the Commission's Order No. 174-B without admitting the validity of such order and without admitting that the Federal Power Commission has jurisdiction over either Sun Oil Company or the subject matter of this filing, and without prejudice to the rights of Sun Oil Company to contest the validity of said order, and without prejudice to its right to contest

the jurisdiction of the Commission over the subject matter of this filing.

Yours very truly,

SUN OIL COMPANY (SOUTHWEST DIVISION),

By G. B. BENNETT,
(G. B. Bennett),
Superintendent Natural Gas Department.

[fol. 165]

BEFORE THE FEDERAL POWER COMMISSION.

APPLICATION FOR A DISCLAIMER OF JURISDICTION OR, IN THE ALTERNATIVE, AN APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

Received Aug. 13, 4 32 PM '57.

In the Matter of:

Sun Oil Company (Southwest Division).
Docket No. G-13059.

Sun Oil Company (Southwest Division), hereinafter referred to as "Sun", hereby applies for an Order of the Commission disclaiming jurisdiction over the facilities and sale of natural gas hereinafter described, or, in the alternative, without waiving its position that its facilities and sale of natural gas are not subject to the Commission's jurisdiction, Sun hereby applies for a certificate of public convenience and necessity, pursuant to the Commission's Order No. 174-B, to authorize the sale by Sun of its gas.

I.

In support of this application, Sun, for a Disclaimer of Jurisdiction, respectfully shows:

Sun is a corporation organized under the laws of the State of New Jersey. Its principal business is the production, transportation, refining, and selling of crude oil, and

the marketing of refined products recovered from crude oil. Incidental to its principal business, it has for many years been engaged, and is now engaged, in the business [fol. 166] of producing and gathering natural gas, and in selling a part of the gas which it produces to purchasers which are natural-gas companies within the meaning of the Natural Gas Act. The gas which Sun sells to natural-gas companies is being sold and delivered from facilities which are not under the Commission's jurisdiction, and Sun does not own or operate facilities which are under the jurisdiction of the Commission. The foregoing statement applies with equal force to the sale of gas hereinafter described, to be made under the terms of a contract entered into subsequent to the issuance of Order 174-B. Consequently, Sun is engaged, and will be engaged after the commencement of the sale hereinafter described, solely in the production and gathering of natural gas within the meaning of Section 1 (b) of the Natural Gas Act and is not a "natural-gas company" as defined in the Act. Moreover, the sale of gas hereinafter described is a local or intrastate sale and not a sale "in interstate commerce" within the meaning of Section 1(b) of the Natural Gas Act.

This application is filed under compulsion of the Commission's Order No. 174-B issued in Docket No. R-138 on December 17, 1954. Sun does not admit the validity of such order but on the contrary contests the validity of such order and denies the Commission's jurisdiction over either Sun or its facilities or its sales (including the sale hereinafter described) or any of its operations. This application is filed without prejudice to Sun's right to contest the validity of the aforesaid order and without prejudice to its right to contest the jurisdiction of the Commission over Sun and the subject of this application.

[fol. 167] It is therefore respectfully submitted that the Commission should issue an order disclaiming jurisdiction as herein requested.

II.

Without waiving its position that Sun's facilities, sales (including the sale hereinafter described), and operations

are not subject to the Commission's jurisdiction, Sun, in support of its request that a certificate of public convenience and necessity be issued to authorize the sale hereinafter described, respectfully shows:

(1) The exact legal name of the applicant is Sun Oil Company. It is a corporation organized and existing under the laws of the State of New Jersey. The location of Sun's principal place of business is Philadelphia, Pa. It is authorized to do business in each and all of the United States.

(2) Sun has no knowledge of any predecessor in interest bona fide engaged in the transportation or sale of natural gas subject to the jurisdiction of the Commission on June 7, 1954.

(3) The names, title and post office address of the persons to whom correspondence or communications in regard to this application should be addressed are: G. B. Bennett, Superintendent, Natural Gas Department, Box 2880, Dallas, Texas, and H. D. Coe, Suite 1208, 1700 "K" Street, N. W., Washington 6, D. C.

(4) As stated above, Sun denies that it is a natural-gas company and denies that it will be a natural-gas company [fol. 168] with respect to the sale hereinafter described, and denies that it was, on June 7, 1954, or will be after the commencement of the sale hereinafter described, engaged in either the transportation of natural gas in interstate commerce or the sale of natural gas in interstate commerce for resale.

Sun now proposes to sell and deliver gas under the terms of a contract with the following Purchaser:

Southern Natural Gas Company, Date of Contract: Aug. 1, 1957,

which contract is being filed contemporaneously herewith as a rate schedule, and to which reference is here made for all purposes of this application.

(i) The source of gas to be produced by applicant for such sale is:

(a) Name and approximate location of field:

Gwinville Field, N/2 of Jefferson Davis County, Miss.

(b) Point or points of delivery:

Same as (a) above.

(ii) Sun will not be engaged in the transportation of natural gas in interstate commerce and will not own any pipe lines so transporting natural gas and subject to the jurisdiction of the Commission. The gas to be delivered by Sun to said Purchaser will be transported by such Purchaser but Sun does not have knowledge of the detailed [fol. 169] route or routes through which such Purchaser will transport such gas.

(iii) Sun does not propose to serve any communities either at wholesale or at retail.

(iv) Sun does not propose to deliver any gas to any main line industrial customers.

(v) In connection with such sale Sun owns the following major appurtenant properties and facilities:

None.

III.

There is attached hereto the following exhibit:

Exhibit "A". A general map of applicant's facilities for the production, gathering, or sale of natural gas to the purchaser, designated above at the location indicated on said map, showing the information designated in Section 157.25 of the Commission's regulations as amended by Order 174-B.

Applicant's description or showing of any facilities in this application or in any exhibit attached hereto is intended only for the information of the Commission, and not for the purpose of requesting a certificate of public convenience and necessity for the construction or operation of such facilities. This application is hereby made only for a certificate of public convenience and necessity authorizing the sale of gas in the circumstances above described. Ap- [fol. 170] plicant does not herein represent any person, individual, or corporation, other than Sun Oil Company.

As stated hereinabove, the contract covering the sale of gas which is the subject of this application is being filed contemporaneously herewith as a rate schedule, and said contract is incorporated herein by reference.

Wherefore, Sun respectfully requests that (a) the Commission without a hearing issue the disclaimer of jurisdiction herein requested, or (b) in the alternative, and without waiving Sun's position that the Commission lacks jurisdiction over Sun, its facilities and operations and the sale of gas herein described, that the Commission issue the certificate of public convenience and necessity herein requested. Sun requests that, in the event the disclaimer of jurisdiction herein requested is not granted, this application be disposed of in accordance with the shortened procedure provided for in Section 1.32 of the Commission's Rules and Regulations. In accordance with said rule, Sun hereby requests that the intermediate decision procedure be omitted and waives oral hearing and opportunity for filing exceptions to the decision of the Commission.

Respectfully submitted,

SUN OIL COMPANY (SOUTHWEST DIVISION),

By G. B. BENNETT,
(G. B. Bennett),
Superintendent Natural Gas Department.

P. O. Box 2880,
Dallas, Texas.

[fol. 171] State of Texas,
County of Dallas. ss.

G. B. Bennett, being first duly sworn, deposes and says that he is Superintendent of the Natural Gas Department of Sun Oil Company (Southwest Division) that he has read the foregoing Application for a Disclaimer of Jurisdiction or, in the Alternative, a Certificate of Public Convenience and Necessity and Temporary Certificate, by him subscribed; that he knows the contents thereof; that he is authorized as such Superintendent to subscribe to such Application for and on behalf of said Company; and that the facts therein set forth are true and correct to the best of his knowledge and belief.

G. B. Bennett.

Subscribed and sworn to before me this 12th day of August, 1957.

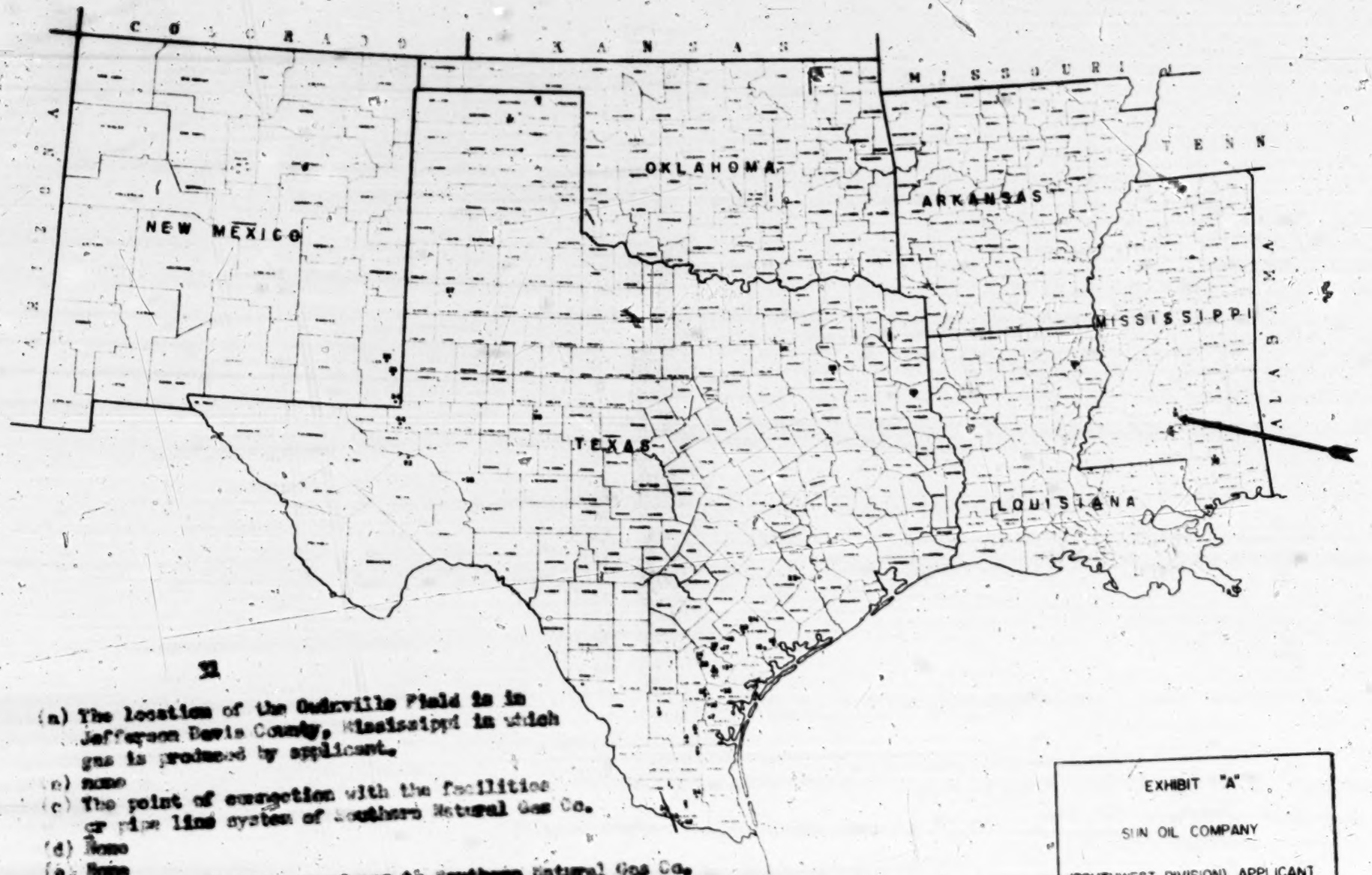
Katherine Lovett,
(Katherine Lovett),
Notary Public in and for
Dallas County, State of
Texas.

(Seal)

[fol. 172]

Exhibit "A"

(See Opposite) ☞



XI

(a) The location of the Oakville Field is in Jefferson Davis County, Mississippi in which gas is produced by applicant.

(b) None

(c) The point of connection with the facilities or pipe line system of Southern Natural Gas Co.

(d) None

(e) None

(f) The point of delivery of gas to Southern Natural Gas Co.

EXHIBIT "A"

SUN OIL COMPANY

(SOUTHWEST DIVISION) APPLICANT

[fol. 172]

EXHIBIT "A"

[fol. 173]

BEFORE THE FEDERAL POWER COMMISSION

Received Aug. 19, 11 06 AM '57.

100-2 Formal.

G-13059.

Official File Copy.

To: Docket RGC.
Init.: DM.
Date: 8/23.
Central Files.

Sun Oil Company
Southwest Division
Rio Grande National Building
P.O. Box 2880
Dallas 21, Texas

Natural Gas Department

S. M. Gladney
Manager
T. F. Hill
Assistant Manager

August 16, 1957

Mr. J. H. Gutride, Secretary
Federal Power Commission
Washington 25, D. C.

Dear Sir:

Please refer to our letter dated August 12, 1957, filed with the Commission on August 13, 1957, transmitting for filing as a Rate Schedule three copies of a contract between Sun Oil Company and Southern Natural Gas Company dated August 1, 1957.

[fol. 174] The last paragraph on page 1 of our letter was inadvertently included stating our intention to invoke Sec-

tion 157.28 of the Commission's Regulations. It is not our intention to invoke Section 157.28 at this time; therefore, we would appreciate your disregarding this paragraph in our letter.

Yours very truly,

SUN OIL COMPANY (SOUTHWEST DIVISION),

By G. B. BENNETT,
(G. B. Bennett),
Superintendent, Natural Gas Department.

DHV:me
cc: Southern Natural Gas Company
Watts Building
Birmingham 2, Alabama
Attn: Mr. H. D. McHenry

BEFORE THE FEDERAL POWER COMMISSION

Docket No. G-13059.

Sun Oil Company

Sept. 12, 1957

Sun Oil Company
Box 2880
Dallas, Texas

Attention: Mr. G. B. Bennett.

Gentlemen:

This is with reference to your application for a certificate of public convenience and necessity in Docket No. G-13059 [fol. 175] and your tender, by letter of August 12, 1957, of the related proposed rate schedule consisting of a contract dated August 1, 1957 with Southern Natural Gas Company.

Such certificate application covers certain acreage in the Gwinville Field, N/2 of Jefferson Davis County, Missis-

sippi, and duplicates the acreage covered by the certificate issued to your company in Docket No. C-6658. Such previously issued certificate is still applicable to the gas sales from the acreage even though the terms of the gas sales contract dated August 26, 1947 (which you incorporated by reference in such certificate application) has expired. In view of such duplication, your application for a certificate of public convenience and necessity in Docket No. G-13059 is hereby rejected. A copy of such application is returned herewith.

In regards to your tender of new contract dated August 1, 1957 as the rate schedule covering the sale of gas from certain units in the Gwinville Field to Southern Natural, such proposed rate schedule duplicates sales from units covered by your existing FPC Gas Rate Schedule No. 55 and such proposed rate schedule embodies a change in the effective rate for gas sales from such units. The proposed new rate schedule should be submitted as superseding your existing rate schedule and be submitted in accordance with Section 154.94 of the Commission's Regulations, Changes in Rate Schedules.

Since your rate schedule tender does not comply with Section 154.94 of the Commission's Regulations, it is hereby rejected and all copies returned herewith. Such rejection is without prejudice to the retender of the proposed rate [fol. 176] schedule accompanied by the material required by Section 154.94.

Very truly yours,

MICHAEL J. FARRELL,
Acting Secretary.

Enclosure No. 117819

BEFORE THE FEDERAL POWER COMMISSION

APPLICATION FOR REHEARING.

Received Oct. 10, 4 08 PM '57.

Comes now Sun Oil Company (hereinafter referred to as "Sun") and, pursuant to the provisions of Section 19(a)

of the Natural Gas Act and Section 1.34 of the Commission's Rules and Regulations, being an aggrieved party, hereby applies for rehearing and reconsideration of the Commission's letter order issued September 12, 1957, purporting to reject Sun's application for a certificate of public convenience and necessity in Docket No. G-13059 and purporting to reject Sun's related rate schedule filing. In support of this application for rehearing, it is respectfully represented as follows:

I.

Under date of August 1, 1957, Sun, as Seller, and Southern Natural Gas Company, as Buyer, entered into a contract providing for the sale and purchase of gas produced from certain described properties located in the Gwinville Field, Jefferson Davis County, Mississippi, for a term of [fol. 177] twenty years from and after September 3, 1957.

On August 13, 1957, Sun filed with the Commission an application for a certificate of public convenience and necessity covering the above mentioned sale of gas. The application was docketed by the Commission as Docket No. G-13059.

Likewise on August 13, 1957, Sun filed with the Commission as Sun's rate schedule covering the above mentioned sale of gas, along with other documents, a copy of Sun's contract of August 1, 1957, with Southern Natural Gas Company.

Both the application for certificate and the rate schedule filing were prepared and submitted in accordance with all formal requirements of the Natural Gas Act and the Commission's Rules and Regulations under the Natural Gas Act.

In its letter order of September 12, 1957, at which this application for rehearing is directed, the Commission, acting through its Acting Secretary, purported to reject said application for a certificate of public convenience and necessity and to reject said rate schedule.

The letter order of September 12, 1957, makes reference to a certificate issued to Sun in Docket No. G-6658 and to Sun's FPC Gas Rate Schedule No. 55. The certificate and rate schedule thus referred to covered a distinct and separate sale of gas to Southern Natural Gas Company under a contract dated August 26, 1947, which contract by its own

[fol. 178] terms, set out in Article XIV thereof, expired and terminated at the expiration of the stipulated ten-year term on September 3, 1957.

I.

The letter order of September 12, 1957, is unlawful for the following reasons:

Sun's contract of August 26, 1947, with Southern Natural Gas Company, which is on file with the Commission as Sun's FPC Gas Rate Schedule No. 55, expired and terminated by its own terms at the expiration of the stipulated term of the contract on September 3, 1947. Sun's contract of August 1, 1947, with Southern Natural Gas Company, which the Commission has purported to reject as a rate schedule, covers an entirely distinct and separate sale of gas to Southern Natural Gas Company. Sun is, therefore, entitled to file such contract of August 1, 1957, as an initial rate schedule under the provisions of Section 4(c) of the Natural Gas Act and Section 154.92(b) of the Commission's Regulations. Since Sun's rate schedule filing clearly falls within the scope of those provisions as an initial rate schedule, the Commission is without authority, either under the statute or under its own regulations, to reject such initial filing.

Section 4(c) of the Act provides that, " . . . every natural-gas company shall file with the Commission, . . . and shall keep open in convenient form and place for public inspection, SCHEDULES SHOWING ALL RATES AND CHARGES FOR ANY transportation or SALE subject to the jurisdiction of the Commission, . . ."[1] Under Section [fol. 179], 154.92(b) of the Commission's Regulations, "Every independent producer who, . . . proposes to INITIATE an interstate transportation or SALE of natural gas subject to the jurisdiction of the Commission to an EXISTING or new CUSTOMER shall file with the Commission not less than 30 days nor more than 90 days prior to the date such transportation or sale is proposed to be INITIATED a rate schedule, as defined in Section 154.93 hereof, setting forth the terms and conditions of service

[1] All emphasis is supplied in this application for rehearing.

and all rates and charges for such transportation or sale. . . "

Within the meaning of these provisions Sun's contract of August 1, 1957, accomplishes a SALE of natural gas and such sale is entirely separate and distinct from any other sale. Even the Commission's Regulations recognize that such a separate and distinct sale may be made to an EXISTING customer without losing its identity as a separate and distinct sale. Hence, Sun is entitled, and even required, by the statute and the regulations to file an initial rate schedule covering such sale. Sun's contract of August 1, 1957, constitutes its rate schedule for the sale under the provisions of both Section 4(c) of the Natural Gas Act and Section 154.93 of the Commission's Regulations. Hence, Sun's filing of its contract of August 1, 1957, as its initial rate schedule for the sale covered thereby met all formal requirements of the statute and the regulations and the Commission was without authority to reject the filing.

By the same token, Sun's contract of August 1, 1957, may not lawfully be treated as a change in rate schedule, [fol. 189] nor may Sun lawfully be required to file the contract as a change in rate schedule in order to make its terms effective. The earlier contract of August 26, 1947, filed and designated as Sun's FPC Gas Rate Schedule No. 55, expired and terminated by its own terms. It no longer exists as the basis for any change. The contract of August 1, 1957, purportedly rejected by the Commission, is in no sense a "change" in the earlier contract or in the prices set out therein, but is rather a separate and distinct contract covering an entirely separate and distinct sale. There is no relationship between the two contracts which can properly be made the basis for any theory that the later contract is a "change" in the earlier contract or that the later contract "supersedes" the earlier contract, nor does the sale accomplished by the later contract "duplicate" the sale accomplished by the earlier contract under any valid theory.

Sun's contract of August 1, 1957, can not validly be treated as a "change" in rate or rate schedule within the meaning of Sections 4(d) and (e) of the Natural Gas Act. Therefore, the Commission's order of September 12, 1957,

unlawfully required that such contract be submitted, if at all, "in accordance with Section 154.94 of the Commission's Regulations, Changes in Rate Schedules."

Even under the Commission's Regulations, Sun's contract of August 1, 1957, is not a "change" in the earlier contract with Southern Natural Gas Company which had been filed and designated as Sun's FPC Gas Rate Schedule No. 55, nor is it a "change" in such rate schedule. Under Section 154.93 of the Regulations, Sun's Rate Schedule No. 55 con-
[fol. 181] sisted exclusively of the "basic contract" of August 26, 1947 "and all supplements or agreements amendatory thereof." Such basic contract has not been supplemented or amended since the initial filing thereof with the Commission by Sun as a rate schedule, and such basic contract came to a complete end by its own terms as of September 3, 1957. Sun does not seek to make any supplement or amendment to such contract or to the rate schedule which consists of such contract, or to change the rate contained therein, but only to make effective an entirely separate and distinct sale of gas under an entirely separate and distinct contract. Section 154.94 of the Commission's Regulations is not applicable to such a state of facts where there is no proposal to change an existing rate or rate schedule covering an existing sale. If such section of the Regulations be construed by the Commission as applicable to such facts, then such section of the Regulations is in conflict with Section 4 of the Natural Gas Act and is necessarily void.

It is clear from the Natural Gas Act that the Commission's power to apply the provisions of Sections 4(d) and (e) thereof is limited exclusively to a "change" in rates and does not extend to the "initial filing" thereof, as is the case here. The only provisions in the Act for action by the Commission with respect to rates and charges filed initially by a natural-gas company are to be found in Section 5 of the Act, which action can only be taken after hearing and on the basis of proper findings.

The Commission's letter order of September 12, 1957, is invalid also because it is in conflict with the decisions of the Supreme Court of the United States in *United Gas*
[fol. 182] *Pipeline Co.* v. *Mobile Gas Service Corp.*, 350

U.S. 332 (1956) and *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Sun's contract of August 1, 1957, does not constitute a modification or amendment newly changing a previously filed rate schedule. As was made plain by the Supreme Court in the *Mobile* case, the basic scheme of the Natural Gas Act is to permit rates to be determined in the first instance by natural-gas companies, by contract or otherwise; the intail rate-setting powers are with the natural-gas companies. Under the Court's analysis of the Act, Sun's contract of August 1, 1957, constitutes an exercise by Sun of its INITIAL RATE-SETTING POWER and the Commission is without authority to treat the contract as a "change" within the meaning of Section 4 of the Act.

In this case the contract comprising the previously filed rate schedule has terminated and expired by its own terms. The ONLY rate established by agreement of the parties from and after September 3, 1957, is the price set out in the contract of August 1, 1957. Hence, by issuing the order purporting to reject the rate schedule filing the Commission has done what the Supreme Court said it has no power to do in the *Mobile* case. It has usurped the right reserved to natural-gas companies by the Act to establish their rates initially. This is so because the price which the Commission purports to continue in effect, in the absence of a "change" filed and permitted to become effective under Section 4 of the Act, can not be rested upon any contract between the companies involved. The contract which gave rise to such price initially has terminated and expired by [fol. 183] its own terms. A separate and distinct sale and purchase of gas has been made by the parties under the contract of August 1, 1957, and the Commission may not lawfully refuse to permit Sun to file such contract as its initial rate schedule.

The Commission's letter order of September 12, 1957, is invalid because under Sections 4 and 5 of the Natural Gas Act, prescribing the procedure to be followed by the Commission with respect to rate schedule filings, the Commission is not authorized to reject a rate schedule filing

meeting all formal requirements. That the Commission lacks statutory power to reject a gas rate schedule filing was authoritatively determined by the United States Court of Appeals for the Third Circuit in *Mississippi River Fuel Corp.* v. *Federal Power Commission*, 202 F. 2d 899, 902 (1953), where an order of the Commission purporting to "reject" a tariff schedule filing was set aside.

The Commission's order is unlawful for the further reason that the Commission is without authority to reject Sun's application for a certificate of public convenience and necessity. Such application conformed to all formal requirements of the Natural Gas Act and the Commission's Regulations. Under Section 7(c) of the Act Sun's contract of August 1, 1957, is a contract by which Sun proposes to ENGAGE in a SALE of gas for which a certificate is both permitted and required. Such sale is separate and distinct from any other sale, and is not a continuation of another sale. Moreover, with respect to such sale Sun meets all of the qualifications imposed by Section 7(e) of the Act. Under Section 157.23(b) of the Commission's Regulations [fol. 184] implementing the foregoing provisions of the Natural Gas Act the sale of gas covered by Sun's contract of August 1, 1957, is a "new" sale for which a certificate again is both permitted and required. Therefore, the Commission's purported rejection of Sun's application for a certificate is contrary to both the Natural Gas Act and the Commission's own Regulations.

The Commission's order purporting to reject Sun's application for certificate is unlawful for the reason that such purported action was taken without according to Sun a hearing on its application for certificate pursuant to the mandatory requirements of Section 7(c) of the Natural Gas Act. Such section requires that in all certificate cases "the Commission SHALL set the matter for hearing." The mandatory character of this requirement of a hearing on all certificate applications was recognized and enforced in *Northeastern Gas Transmission Company* v. *Federal Power Commission*, 195 F.2d 872, 880 (3rd Cir. 1952), cert. denied, 344 U.S. 818, where the Court held that the natural-gas company was entitled to a hearing on its certificate application "as a matter of right."

The Commission's order purporting to reject Sun's initial rate schedule filing is unlawful for the reason that such purported action was taken without according to Sun the hearing which is required by Section 5 of the Act as a prerequisite to any modification of Sun's rate schedule and without making the findings which are required by such section as a prerequisite to such modification.

[fol. 185] The Commission's order is unlawful for the reason that the Commission failed to give notice to Sun and failed to accord to Sun an opportunity for hearing, contrary to the Natural Gas Act, the Administrative Procedure Act, and the due process clause of the Fifth Amendment to the Constitution of the United States.

The Commission's order is unlawful for the reason that the order lacks adequate and proper findings of fact and conclusions of law in support of the Commissions ultimate conclusions therein, contrary to the Natural Gas Act (particularly Sections 4, 5 and 7 thereof), the Administrative Procedure Act (particularly Section 8(b) thereof), and the Fifth Amendment to the Constitution of the United States. The Commission's ultimate conclusions set out in the order are plainly not related by the Commission, by adequate findings, to the requirements of the Natural Gas Act with respect to rate schedule filings and certificate applications, as such requirements are discussed above in this application for rehearing. Moreover, the order of the Commission is not supported by substantial evidence and it is, therefore, unlawful. This deficiency is particularly glaring with regard to the Commission's findings that "such proposed rate schedule duplicates sales from units covered by your existing FPC Gas Rate Schedule No. 55" and that "such proposed rate schedule embodies a change in the effective rate for gas sales from such units."

Wherefore, Sun Oil Company respectfully requests that the Commission grant this application for rehearing of its order of September 12, 1957, and accord Sun Oil Company [fol. 186] such other and further relief as appears appropriate.

Respectfully submitted,

SUN OIL COMPANY,

Original signed by:

By LEO J. HOFFMAN,
(Leo J. Hoffman),
Its Attorney.
MARTIN A. ROW,
LEO J. HOFFMAN,

P. O. Box 2880,
Dallas Texas.

ROBERT E. MAY,
MAY, SHANNON and MORLEY,

1700 K Street, N.W.,
Washington 6, D.C.

Attorneys for Sun Oil Company.

Dated October 9, 1957.

The State of Texas,
County of Dallas.

Leo J. Hoffman, being first duly sworn, deposes and says that he is Attorney for Sun Oil Company that as such he has signed the foregoing Application for Rehearing for an in behalf of said Company; that he is authorized so to do; that he has read said Application for Rehearing and is familiar with the contents thereof; and that the matters and things set forth are true and correct to the best of his information, knowledge and belief.

[fol. 187] Original Signed by:

LEO J. HOFFMAN,
(Leo J. Hoffman).

Subscribed and sworn to before me, a Notary Public, this 9th day of October, 1957.

RUTH DEWITT,
(Ruth DeWitt),
Notary Public in and for
Dallas County, Texas.

(Seal)

My Commission expires June 1, 1959.

Certificate of Service.

I hereby certify that I have this day served a copy of the foregoing Application for Rehearing of Sun Oil Company by mailing a copy thereof, postage prepaid, to the following:

Southern Natural Gas Company
Watts Building,
Birmingham 2, Alabama.

Dated at Dallas, Texas, this 9th day of October, 1957.

Original Signed by:

LEO J. HOFFMAN,
(Leo J. Hoffman),
Attorney for Sun Oil Company.

[fol. 188]

BEFORE THE FEDERAL POWER COMMISSION

ORDER DENYING MOTION FOR RECONSIDERATION—
Issued November 8, 1957

Before Commissioners: Jerome K. Kuykendall, Chairman; Seaborn L. Digby, Frederick Stueck, William R. Connole and Arthur Kline.

Sun Oil Company (Sun), on October 10, 1957, filed in this proceeding a petition for reconsideration of the Commission's action by letter of September 13, 1957, rejecting Sun's application filed on May 3, 1957, for a certificate of public convenience and necessity, and a contract related thereto dated August 1, 1957, covering sales to Southern Natural Gas Company (Southern Natural) of natural gas produced from Gwinville Field, Jefferson Davis County, Mississippi, at a proposed rate of 20 cents per Mcf, which was tendered as an initial rate schedule.[1]

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[1] The document tendered by Sun is captioned as an "Application for Rehearing". Such an application may not be filed in this matter under our rules (Sec. 1.30(e)). However, we have accepted and considered the document as a motion for reconsideration.

The Commission's rejection of the application and the proposed filing of the contract was based upon the fact that a previously issued certificate, in Docket No. G-6658, is still applicable to gas sales from the same gas producing acreage in Gwinville Field to the same buyer, Southern Natural, and that an existing effective rate schedule, Sun's [fol. 189] FPC Gas Rate Schedule No. 55, and supplements thereto, cover the continued service from that acreage even though the contract permitted to be filed as such rate schedule contains a termination date of September 3, 1957.[2] By another order issued this date we have provided that Sun's proposed rate schedule be accepted for filing as a proposed change in rates and have designated it as Supplements Nos. 3 and 4 to Sun's FPC Gas Rate Schedule No. 55.

THE COMMISSION FINDS:

The alleged assignments of error and the grounds advanced by Sun for reconsideration of the Commission's rejection of Sun's application filed May 3, 1957, for a certificate of public convenience and necessity as above described set forth no facts or principles of law which either were not fully considered by the Commission when it issued the said letter, or which having been now considered warrant either the modification or the vacation of such letter.

THE COMMISSION ORDERS:

The petition for reconsideration filed herein by Sun Oil Company on October 10, 1957, be and it is hereby denied.

By the Commission. Commissioner Digby dissenting.

J. H. GUTRIDE,
(Joseph H. Gutride),
Secretary.

[fol. 190] DIGBY, Commissioner, DISSENTING:

I am forced to dissent in this proceeding not only in the action of the Commission in overruling the motion for

[2] Sun has not, pursuant to Section 7 (b) obtained any approval of termination or abandonment of service under the existing rate schedule which provides the rate of 7.36 cents per Mcf.

rehearing of the letter order dated September 12, 1957, but also in the authority and wisdom of issuing the original rejection. It is my view that the application for certificate of public convenience and necessity and rate schedule filing should have been accepted and at least fixed for hearing to determine whether or not the action is an increase in an existing rate or an initial rate. The letter of rejection was sent out by the Secretary under his delegated authority but was not by the direction of the Commission. The fact that the land description or geographical area in the new filing may be the same as that in the old contract is not controlling. Certainly if the production is from a different reservoir than that covered by the old contract, it should be treated as an initial filing. I feel that the matter should have been set for hearing with the interested parties given an opportunity to present the facts and make a record from which the Commission could determine the issues.

S. L. Digby,
Commissioner.

[fol. 191]

Before the Federal Power Commission

Order Denying Motion for Reconsideration. Errata Notice—Issued November 8, 1957

(December 6, 1957.)

On first page, second paragraph, last sentence, change:

"Supplements Nos. 3 and 4 to Sun's FPC Gas Rate Schedule No. 55" to read as follows:

"Sun's FPC Gas Rate Schedule No. 87 and Supplement No. 1 thereto."

J. H. Gutride,
(Joseph H. Gutride),
Secretary.

Memorandum for Files.

Copy of Errata Notice sent to all persons receiving a copy of the order issued in the above-entitled matter.

cc: OGC.
MRH:sdp—12/6/57.

[fol. 192]

BEFORE THE FEDERAL POWER COMMISSION

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES—Issued November 8, 1957

Before Commissioners: Jerome K. Kuykendall, Chairman; Seaborn L. Digby, Frederick Stueck, William R. Connole and Arthur Kline.

Docket No. G-13664.

Sun Oil Company (Sun) on October 10, 1957, filed a request for reconsideration of the Commission's action of September 13, 1957, rejecting Sun's application for a certificate of public convenience and necessity in Docket No. G-13959 and rejecting Sun's filing of its contract, dated August 1, 1957, providing for sales to Southern Natural Gas Company (Southern Natural) of natural gas produced from Gwinville Gas Company (Southern Natural) of natural gas produced from Gwinville Field, Jefferson Davis County, Mississippi, at a proposed rate of 20¢ per Mcf, which it submitted as an initial rate schedule. By separate order issued concurrently herewith we have denied such motion for reconsideration.

As an alternative to the motion for reconsideration, Sun tendered the above-mentioned contract of August 1, 1957, as a proposed change in rate, with a notice of the change[1] which have been designated as Supplements Nos. 3 and 4 [fol. 193] to Sun's FPC Gas Rate Schedule No. 55.

In support of the proposed increased rates of 20¢ per Mcf, Sun states the price was determined by bargaining at arm's length and constitutes an integral part of the contract consideration. Sun further states the price does not exceed the market price, market value, or commodity value of gas in the area and is just and reasonable, particularly in view of the long term of the contract and the nature and location of the gas reserves.

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[1] Notice of Change dated October 9, 1957, filed October 10, 1957.

The increased rates and charges tendered by Sun have not been shown by Sun to be justified, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

THE COMMISSION FINDS:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change and that the supplements above described be suspended and the use thereof deferred as hereinafter ordered.

THE COMMISSION ORDERS:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing be held upon a date to be fixed by notice from the [fol. 194] Secretary, concerning the lawfulness of the proposed increased rates and charges.

(B) Pending such hearing and decision thereon, said supplements be and they are hereby suspended and the use thereof deferred until April 10, 1958, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided in Sections 1.8 and 1.37 (f) of the Commission's Rules of Practice and Procedure [18 CFR 1.8 and 1.37 (f)].

By the Commission. Commissioner Digby dissenting.

J. H. Gutride,
(Joseph H. Gutride),
Secretary.

DIGBY, Commissioner, DISSENTING:

I am forced to dissent in this proceeding not only in the action of the Commission in overruling the motion for rehearing of the letter order dated September 12, 1957, but [fol. 195] also in the authority and wisdom of issuing the original rejection. It is my view that the application for certificate of public convenience and necessity and rate schedule filing should have been accepted and at least fixed for hearing to determine whether or not the action is an increase in an existing rate or an initial rate. The letter of rejection was sent out by the Secretary under his delegated authority but was not by the direction of the Commission. The fact that the land description or geographical area in the new filing may be the same as that in the old contract is not controlling. Certainly if the production is from a different reservoir than that covered by the old contract, it should be treated as an initial filing. I feel that the matter should have been set for hearing with the interested parties given an opportunity to present the facts and make a record from which the Commission could determine the issues.

S. L. DIGBY,
Commissioner.

[fol. 196]

BEFORE THE FEDERAL POWER COMMISSION

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES. ERRATA NOTICE—Issued November 8, 1957

(December 6, 1957).

On first page, second paragraph, last sentence, change: "Supplements Nos. 3 and 4 to Sun's FPC Gas Rate Schedule No. 55" to read as follows:

"Sun's FPC Gas Rate Schedule No. 87 and Supplement No. 1 thereto."

On Second page, in paragraph entitled "The Commission finds and in ordering paragraphs "(B)" and "(C)", change the word supplements to read:

"rate schedule and supplement".

J. H. GUTRIDE,
(Joseph H. Gutride),
Secretary.

Memorandum for Files.

Copy of Errata Notice sent to all persons receiving a copy of the order issued in the above-entitled matter.

cc: OGC
MRH:sdp—12/6/57.

[fol. 197]

BEFORE THE FEDERAL POWER COMMISSION

100-2 Formal.

Docket Nos. G-13059 and G-13664.

Sun Oil Company,

Certified.

95458.

Nov. 13, 1957.

Sun Oil Company
Natural Gas Department
P. O. Box 2880
Dallas 21, Texas

Attention: G. B. Bennett, Supt.

Gentlemen:

Enclosed order(s) issued by the Commission today in the above-entitled matter(s).

Very truly yours,

JOSEPH H. GUTRIDE,
Secretary.

Enclosure(s).

STATE COMMISSION AND GOVERNOR FORM LETTERS SENT TO: (G-13664) Mississippi Public Service Commission, Jackson 5, Mississippi, Hon. James P. Coleman, Governor of Mississippi, Jackson, Miss.

COPY OF ORDERS SENT TO:

Senators—John C. Stennis and James O. Eastland (Miss.)

[fol. 198] H. D. Coe, Esq., Suite 1208, 1700 K St., N. W., Washington 6, D. C.

Southern Natural Gas Company, Watts Building, Birmingham, Alabama.

cc: OGC.
MRH:mt—11/8/57.

BEFORE THE FEDERAL POWER COMMISSION

APPLICATION FOR REHEARING.

Received Dec. 2, 10 40 AM '57.

Docketed L.M.L.

Original.

To: Docket.
Init.: L.M.L.
Date: 12-13.

In the Matter of:

Sun Oil Company.

Docket No. G-13664.

Comes now Sun Oil Company (Sun) and, pursuant to the provisions of Section 19(a) of the Natural Gas Act and Section 1.34 of the Commission's Rules of Practice and Procedure, being an aggrieved party, hereby applies for rehearing of the Commission's order in the above-entitled [fol. 199] proceeding, bearing an issuance date of November 8, 1957 and entitled "Order for Hearing and Suspending Proposed Changes in Rates." In support of this application for rehearing, it is respectfully represented as follows:

I.

This proceeding involves a contract between Sun, as Seller, and Southern Natural Gas Company (Southern), as

Buyer, dated August 1, 1957, and providing for the sale and purchase of gas produced from certain described properties located in the Gwinville Field, Jefferson Davis County, Mississippi, for a term of twenty years from and after September 3, 1957. On August 13, 1957, in a proceeding docketed by the Commission as Docket No. G-13079, Sun filed an application for a certificate covering this new sale, and the aforesaid contract was filed as a related initial rate schedule. By letter order dated September 12, 1957, these filings were purportedly rejected, the letter of rejection reciting that Sun had made a certificate and rate filing under a prior contract with Southern (which expired by its own terms on September 3, 1957) covering a sale from the Gwinville Field and the new contract of August 1, 1957 was erroneously interpreted as a "change" in rate schedule under the Natural Gas Act and the Commission's Regulations thereunder. Thereafter, on October 10, 1957, Sun filed an application for rehearing of this letter order and the Commission, by an order bearing an issuance date of November 8, 1957, erroneously treated the application for rehearing as a motion for reconsideration and further erroneously denied the relief sought in such application.

[fol. 200] II.

Because of the rejection, by the letter order of September 12, 1957, of the new certificate application in Docket No. G-13079 and the related filing of the new contract as an initial rate schedule, Sun was compelled, in order that it might not be further penalized, to file a notice of so-called "change" in accordance with Section 154.94 of the Commission's Regulations. This filing was made under protest and compulsion and with specific reservations with respect to the legality of the letter order and the jurisdiction of the Commission. The order to which this application for rehearing is addressed in Docket No. G-13664, bearing an issuance date of November 8, 1957, erroneously and unlawfully designated this filing as Supplements Nos. 3 and 4 to Sun's FPC Gas Rate Schedule No. 55 and suspended and deferred its use until April 10, 1958.

III.

The order of the Commission, bearing an issuance date of November 8, 1957, in the above-entitled proceeding in Docket No. G-13664, is erroneous and unlawful for the following reasons:

1. As recited therein, the order is based upon the Commission's rejection of Sun's certificate application in Docket No. G-13079 and the rejection of the new contract of August 1, 1957 as an initial rate schedule. Having erroneously rejected these filings, the Commission, in the instant order, has unlawfully assumed the authority to treat and consider the new contract as a "change" in rate schedule under the Natural Gas Act and the Commission's Regulations and to [fol. 201] suspend its effectiveness. For all of the reasons stated in the application for rehearing in Docket No. G-13059 (incorporated herein by reference), the new contract of August 1, 1957 with Southern constituted a new sale of natural gas entirely separate and distinct from any other sale and Sun was entitled to file the new contract as an initial rate schedule under Section 4(c) of the Natural Gas Act and Section 154.93 of the Commission's Regulations. Therefore, the new contract cannot lawfully, as purported to be accomplished by the instant order, be treated and considered by the Commission as a "change" in rate schedule subject to the Commission's power of suspension within the meaning of Section 4(d) and (e) of the Natural Gas Act and may not lawfully be required to be submitted as such a "change" in accordance with Section 154.94 of the Commission's regulations. As held in *United Gas Pipeline Co.* v. *Mobile Gas Service Corporation*, 350 U.S. 332, the basic scheme of the Natural Gas Act is to permit prices to be determined in the first instance by natural gas companies, by contract or otherwise.

2. The instant order of suspension is invalid for the further reason that, even assuming, *arguendo*, the Commission had authority to suspend, the order fails to contain a "statement in writing of its [the Commission's] reasons for such suspension" as required by Section 4(e) of the Natural Gas Act.

3. Further assuming, *arguendo*, the Commission's authority to suspend, the instant order is invalid because it was not issued until more than 30 days had elapsed after the date of filing, and was thus in contravention of Section [fol. 202] 4(d) of the Natural Gas Act. Although the Commission addressed a telegram to Sun on November 8, 1957, advising of its action, the order itself was not released until November 13, 1957, which was beyond the statutory period of 30 days. The telegraphical advice to Sun constitutes insufficient compliance with the statute.

Wherefore, Sun respectfully requests that the Commission grant this application for rehearing and accord Sun such other and further relief as appears appropriate.

Respectfully submitted,

SUN OIL COMPANY

By ROBERT E. MAY,
(Robert E. May),
Its Attorney.

MARTIN A. ROW,
LEO J. HOFFMAN.

P. O. Box 2880,
Dallas, Texas.

ROBERT E. MAY,
MAY, SHANNON and MORLEY,

1700 K Street, N.W.
Washington 6, D. C.

District of Columbia, ss:

Robert E. May, being first duly sworn, deposes and says that he is attorney for Sun Oil Company; that as such he has signed the foregoing "Application for Rehearing" for and on behalf of said Company; that he is authorized so to do; that he has read said document and is familiar with the contents thereof; and that the matters and things there-

in set forth are true and correct to the best of his information, knowledge and belief.

ROBERT E. MAY,
(Robert E. May).

[fol. 203] Subscribed and sworn to before me, a Notary Public, this 2nd day of December, 1957.

THOMAS C. EVANS,
(Thomas C. Evans),
Notary Public.

(Seal)

My Commission expires September 14, 1960.

Received Dec. 2, 10 40 AM '57.

Certificate of Service.

I hereby certify that I have this day served a copy of the foregoing document by mailing a copy thereof, properly addressed, postage prepaid, to the following:

Southern Natural Gas Company,
Watts Building,
Birmingham 2, Alabama.

Dated at Washington, D. C. this 2nd day of December, 1957.

ROBERT E. MAY,
(Robert E. May).

[fol. 204]

BEFORE THE FEDERAL POWER COMMISSION

Docket No. G-13664.

Sun Oil Company.

Dec. 10, 1957.

Robert E. May, Esq.,

May, Shannon and Morley
1700 K Street N.W.
Washington 6, D. C.

Dear Mr. May:

Reference is made to the application submitted for filing on December 2, 1957 for rehearing of the Commission's order issued November 8, 1957 in the above-designated matter.

Your attention is invited to Section 1.30(e) of the Commission's Rules of Practice and Procedure which provides:

No application for rehearing, provided for by the statute under which a proceeding is initiated and conducted, will be entertained by the Commission until a decision is issued and becomes final under the provisions of this section.

Your application is not addressed to a final order within the meaning of the rules and is, therefore, not acceptable for filing. It is hereby rejected and copies are returned herewith.

Very truly yours,

J. H. GUTRIDE,
Secretary.

[fol. 205] Enclosure No. 46323.

cc:

Mr. Martin A. Row
Mr. Leo J. Hoffman
P. O. Box 2880
Dallas, Texas.

cc:

OGC
RGC
OPR
Docket Section (2)
SEC
JHG:ls

12/3/57.

[fol. 206]

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—January 5, 1959 (omitted in printing).

[fol. 207]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17040

SUN OIL COMPANY, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

Petition for Review of Orders of the Federal Power Commission

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Before Tuttle, Jones and Brown, Circuit Judges.

OPINION—April 17, 1959

JONES, Circuit Judge:

Sun Oil Company, herein called Sun, made a contract bearing date August 26, 1947, with Southern Natural Gas

Company, herein referred to as Southern, for the sale to the latter of natural gas to be produced by Sun from the Gwinville Field in Mississippi. The contract provided that it should be in effect for ten years commencing on the date of the first delivery of gas by Sun to Southern. [fol. 208] This date was September 3, 1947. The contract provisions as to price were in these terms:

> "Subject to the provisions of Article VI hereof, providing for a possible adjustment in price, Buyer agrees to pay Seller for all gas purchased hereunder a price
>
> (1) of seven and one-half cents (7½¢) for each one thousand (1,000) cubic feet of gas during the first five (5) years of the term hereof;
>
> (2) of eight cents (8¢) for each one thousand (1,000) cubic feet of gas during the second five (5) years of said term."

Immediately following the foregoing was this proviso:

> "In this connection, it is understood that by this agreement Seller is not dedicating to Buyer, or to Buyer's market outlet, any portion of Seller's gas reserves in the Gwinville Gas Field or any portion of the gas produced by Seller from its wells in said field, but that Seller is simply selling and Buyer is purchasing the quantity of gas called for in this agreement on the terms specified in this agreement and for the price set out above; • • •."

Subsequent to the Phillips Petroleum case,[1] decided on June 7, 1954, the Federal Power Commission supplemented the provisions of the Natural Gas Act, 15 U.S.C.A. § 717 et seq., by issuing its so-called No. 174 series of orders[2] which required independent producers of natural [fol. 209] gas to file rate schedules and apply for certifi-

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[1] Phillips Petroleum Company v. Wisconsin, 347 U. S. 672, 74 S. Ct. 794, 98 L. Ed. 1035, 3 P U R 3d 129.

[2] 18 C F R §§ 154.91-154.102, §§ 157.23-157.31.

cates of public convenience and necessity. Sun applied for and procured a certificate of public convenience and necessity authorizing the sale of natural gas to Southern. It filed the contract as a rate schedule under Section 4 of the Natural Gas Act.[3]

Prior to the termination of their agreement Sun and Southern made a new agreement in 1957 which was to become effective upon the expiration of the 1947 agreement. This provided for continued deliveries of gas in the same field and with the same facilities. The contract was, for the most part, substantially the same as that which it succeeded. The primary difference was an increase from 8¢ per Mcf to 20¢ per Mcf of gas. Sun then applied, under the new contract, for a new certificate of public convenience and necessity and filed the new contract as an initial rate schedule. The Commission rejected the application and filing on the ground that, the same service being involved, any new certificate would merely duplicate the earlier certificate which was still effective and outstanding and the proposed rate filings were of rate changes rather than initial rate filings. Protesting the Commission's order and reserving its right to contest it, Sun resubmitted the 1957 contract as a rate change. The Commission then, as is authorized by Section 4 of the Act, suspended the effectiveness of the rate change for the statutory period of five months. At the expiration of the five-month period the 20¢ rate was placed in effect and Sun undertook to make such refunds as might be required. Sun has petitioned this Court to [fol. 210] review the order of the Commission rejecting the application for a certificate and an initial rate filing, and the order suspending the rate change. Although a number of specifications of error are made, most of them are hinged upon the proposition that the rate set forth in the new contract was an initial rate filing, and the collateral doctrine that the certificate of public convenience and necessity which was originally issued had expired and become functus officio upon the date fixed for the expiration of the first contract by its terms.

[3] 15 U.S.C.A. § 717 c.

It is "rates and charges" that are subject to regulation.[4] The method of filing and regulating rates has thus been succinctly stated.

> "The act requires natural gas companies to file all rates and contracts with the Commission (§4(c)) and authorizes the Commission to modify any rate or contract which it determines to be 'unjust, unreasonable, unduly discriminatory or preferential' (§5(a)). Changes to previously filed rates or contracts must be filed with the Commission at least 30 days before they are to go into effect (§ 4(d)), and, except in the case of industrial rates, the Commission may suspend the operation of a new rate pending a determination of its reasonableness. (§4(e)). If a decision has not been reached before the period of suspension expires, a maximum of five months, the filed rate must be allowed to go into effect, but the Commission's order may be made retroactive to that date." *United Gas Pipe Line Company* v. *Mobile Gas Service Corporation*, 350 U. S. 332, 76 S. Ct. 373, 100 L. Ed. 373, 12 P U R 3d 112.

[fol. 211] In the Mobile case United was obligated by contract to furnish gas to Mobile at a fixed rate during the contract period of ten years. There was no provision for any different rate nor was there any provision made for changing the rate during the contract term. United undertook to effect a rate increase by filing a new rate schedule with the Commission. It was held that the Natural Gas Act gave no power to put unilateral rate increases into effect, and that United could procure a rate increase, if at all, only by an order of the Commission entered in a proceeding under Section 5 of the Act.

It is urged that the decision in Mobile recognizes a freedom of contract in rate making applicable alike to new contracts and to renewal contracts. The "philosophy of Mobile", as it is referred to, is such as to require, it is contended, a holding that when a contract has, by the

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[4] Natural Gas Act § 4(a), 15 U.S.C.A. § 717c (a).

law of contracts, terminated, the parties are permitted to fix rates for the continued service, free from Section 4 regulation, in the same manner that might have been done before the passage of the Act. We do not think the doctrine of Mobile applies in a situation such as is before us here. In *United Gas Pipe Line Co.* v. *Memphis Light, Gas & Water Division*, 358 U. S. 103, 79 S. Ct. ——, 3 L. Ed. 2d 153, reh. den. 358 U. S. 942, —— S. Ct. ——, 3 L. Ed. 2d 350, it was held that Section 4 procedures were available where rate increases were proposed pursuant to a "going rate" provision in the contract. The purpose of Congress was carried out in framing its regulatory scheme "not only by preserving the 'integrity' of private contractual arrangements for the supply of natural gas, * * * [fol. 212] (subject of course to any overriding authority of the Commission), but also by providing in Section 4 for the earliest effectuation of contractually authorized or otherwise permissible rate changes consistent with appropriate review." 358 U. S. 114.

The same doctrine has been applied where the contract contained a "favored nation" clause and it has been held that rate increases under such a clause are subject to Section 4 of the Act. *Mississippi Power & Light Co.* v. *Memphis Natural Gas Co.*, 5th Cir., 1947, 162 F. 2d 388, 71 P U R N S 182, cert. den. 332 U. S. 770, 68 S. Ct. 82, 92 L. Ed. 355. So too it has been held that rate increases pursuant to the escalator clause of a contract which predated the Phillips decision of June 7, 1954, were rate changes subject to Section 4 of the Act and not initial rates subject to Commission review only under Section 5 of the Act. *Bel Oil Corporation* v. *Federal Power Commission*, 5th Cir., 1958, 255 F. 2d 548, 24 P U R 3d 512, cert. den. 358 U. S. 804, —— S. Ct. ——, 3 L. Ed. 2d 76. It necessarily follows that where, upon the termination of a contract fixing a rate which was the subject of an initial rate filing with the Commission, a new contract is made between the same parties for the same service as was provided by the terminated contract but at a higher rate, the new rate is a rate change and subject to the provisions of Section 4 of the Act, including the provisions relating to the suspension of the rate. The rate fixed by

the new contract is not an initial rate which could be changed only by order of the Commission in a proceeding under Section 5.

[fol. 213] The foregoing disposes of the principal question presented. Other questions remain. The Petitioner contends that since its certificate originally issued authorized the sale by it of natural gas "as more fully described in the application and exhibits", and since the certificate was issued under an order providing that the certificate "shall be effective only so long as the Applicant continues the acts or operations hereby authorized," it must follow that the certificate expired with the contract and the rejection by the Commission of the application for a new certificate was invalid. This contention is based upon a misconception of the purpose and effect of the certificate. The authorization of the certificate is not only for the sale of gas pursuant to the contract but pursuant to and subject to the provisions of the Act and regulation pursuant thereto by the Commission. The Commission has the power under Sections 7(e) and 7 (e) of the Act, 15 U.S.C.A. § 717 f (e), (e), to issue certificate of public convenience and necessity of limited duration. *Sunray Mid-Continent Oil Co.* v. *Federal Power Commission*, 353 U. S. 944, 77 S. Ct. 792, 1 L. Ed. 2d 794, 18 P U R 3d 320. Whether, in this case, the Commission could have granted a certificate limited to the life of the contract, without abusing its discretion, need not be decided. We find nothing to show any intent of the Petitioner to apply for a limited or conditional certificate, nor do we find anything to indicate that the Commission intended to limit its certificate. The matters to which the Petitioner points do not permit of the inference which it would have us draw.

[fol. 214] The Petitioner asserts that because of the rejection of the application for a second certificate without a hearing after notice there was a violation of the administrative requirement of Section 7(e) of the Act, 15 U.S. C.A. § 717 f (e). The Petitioner makes a like contention with respect to the rejection of its second contract as an initial rate filing. Where, as in this case, there could be no right to have a certificate of public convenience and

necessity issued which duplicated a certificate outstanding and operative; and where, as here, the second contract was a nullity as an initial rate filing, it was proper to reject them without notice and without a hearing. Cf. *United Gas Pipe Line Co.* v. *Mobile Gas Service Corporation, supra.*

The Commission suggests that the orders which Sun brings before us for review are interlocutory and that administrative remedies have not been exhausted. To support this view, reliance is placed upon *Shank, Trustee,* v. *Federal Power Commission,* 5th Cir. 1956, 236 F.2d 830, 15 P U R 3d 408, cert. den. 352 U. S. 970, 77 S. Ct. 361, 1 L. Ed. 2d 324, and *Lee, Trustee,* v. *Federal Power Commission,* 5th Cir. 1956, 236 F. 2d 835, cert. den. 352 U.S. 970, 77 S. Ct. 361, 1 L. Ed. 2d 323. In the cited cases the orders were mere procedural steps in the administrative process. The orders which we here review are "of a definitive character dealing with the merits of a proceeding before the Commission and, as such, are reviewable under Section 19(b) of the Act, 15 U.S.C.A. § 717 r (b). *Federal Power Commission* v. *Metropolitan Edison Co.,* 304 U. S. 375, 58 S. Ct. 963, 82 L. Ed. 1408, 24 P U R N S 394; *Magnolia Petroleum Co.* v. *Federal Power Commission,* 5th Cir. 1956, 236 F. 2d 785, 15 P U R 3d 364, cert. den. [fol. 215] 352 U. S. 968, 77 S. Ct. 356, 1 L. Ed. 2d 322. We see no need for the holding of a formal hearing and the taking of testimony where no fact issue was presented. Although the orders before us are, in a sense, procedural and interlocutory, they make a final disposition of questions of grave importance in the natural gas industry. The orders were formal determinations of rights of the petitioners and the effect of the orders was not contingent upon future administrative action. We have no doubt that these orders should be passed upon by this Court.

Sun urges that its contractual relationship with Southern is only for the sale of natural gas, that it engages in no service and renders no service, that it does not propose to abandon any facilities, that it has no facilities subject to the Commission's jurisdiction and hence it is not subject to Section 7 (b) of the Act, 15 U.S.C.A. § 717 f (b). Our decision in *Continental Oil Company* v. *Federal Power*

Commission, —— F. 2d ——, decided this day, is controlling on this issue. A like contention was made before the Court of Appeals for the Third Circuit and its well reasoned conclusions are contrary to the position urged by Sun. *J. M. Huber Corporation* v. *Federal Power Commission*, 3rd Cir. 1956, 236 F.2d 550, 15 P U R 3d 434, cert. den. 352 U. S. 971, 77 S. Ct. 363, 1 L. Ed. 2d 324. The principles there announced are sound and are applicable here. The decision of this Court in *Deep South Oil Company of Texas* v. *Federal Power Commission*, 5th Cir. 1957, 247 F. 2d 882, 20 P U R 3d 469, is not in conflict.

It follows that the Commission's orders should be and hereby are

Affirmed.

[fol. 216]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17040

SUN OIL COMPANY, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

No. 17049

S. W. RICHARDSON, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

No. 17128

HUMBLE OIL & REFINING COMPANY, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

[fol. 217]

No. 17136

MAGNOLIA PETROLEUM COMPANY, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

No. 17256

HUNT OIL COMPANY, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

Petitions for Review of Orders of the Federal Power Commission

Before Tuttle, Jones and Brown, Circuit Judges.

DISSENTING OPINION

BROWN, Circuit Judge, dissenting:

I am in full agreement with the Court that the orders are reviewable. I also accept, as binding on me, our prior decision in *Bel Oil Corp.* v. *FPC*, 5 Cir., 1958, 255 F.2d 548, cert. denied 358 U.S. 804, —— S.Ct. ——, 3 L.Ed.2d 76, holding that an automatic stepped-up escalator increase is a change of rate. I do that even though that decision [fol. 218] was based primarily on our earlier one of *Mississippi Power & Light Co.* v. *Memphis Natural Gas Co.*, 5 Cir., 1947, 162 F.2d 388, cert. denied 332 U.S. 770, 68 S.Ct. 82, 92 L.Ed. 355, which in turn was pronounced in the pre-*Mobile* era when all thought that contracts of a natural gas company, as in the case of any other public utility, were subject to an overriding public regulation. *Mobile* accorded almost absolute sanctity to the private contract and rejected, without so much as a deferential

footnote citation, the traditional and contrary concept of which *Union Dry Goods Co.* v. *Georgia Public Service Corp.*, 1919, 248 U.S. 372, 39 S.Ct. 117, 63 L.Ed. 309, was the symbol as well as the *cause celebre* around which the controversy raged before the Commission and the Third Circuit. 215 F.2d 883, 886.

But in the face of *Mobile* and what it teaches, I think the Court's substantive action affirming the Commission disregards the limited nature of the jurisdiction of the Federal Power Commission, ignores the special and decisive relevance of contract terms, and does all of this without a hearing. I cannot acquiesce in this and must therefore, with deference, dissent.

I.

At the outset I think it well to point out that in realty there is but one basic question. To split it up into apparently separate issues concerning the scope of the Certificate, the change of rate in the contract, or potential abandonment of service "facilities" really only confuses. That is so because these essentially beg the question. For ex- [fol. 219] ample, if the new contract and its new price is a change of rate, then obviously, it is not an initial rate and it must be filed under Section 4(d) subject to supervision and rebate. If the "sale" is something apart from the contract which alone brought it about, so that it must continue after the contract has completely expired by its own terms, then no new Certificate is required, the original one is sufficient, and the new application should be denied. On the other hand, if the power of the Commission over the producer is limited to the "sale" reflected by the contract, then the grant of authority expired with the sales contract, so that a new Certificate would be required since all agree it is illegal to sell or transport or render service without a Certificate. Likewise, on that assumption, the old having expired, all there is is now new, and the new contract would be an initial rate subject only to §5 review and not to §4 interim suspension and rebate.

Each of these things results depending on the basic decision. But none is really a reason *why*.

I submit that a careful reading of the Court's opinion reflects that it finds no real reasons, and in the final analysis what it does, as it has done in *Continental Oil Co. v. FPC*, 5 Cir., 1959, —— F.2d —— [No. 17016], this day decided, is to arrive at its decision out of the conscientious belief that regulation is otherwise ineffectual. I would be the first to think that we could legislate interstitially, but that hardly includes engraftment or transplanting of a congenitally missing organ. If the supposed adverse results apprehended would occur, which I doubt, then Con- [fol. 220] gress, not this Court, should be the surgeon.

II.

The Court, after pointing out that we have held that during the life of an *existing contract*, an increase in price from the operation of a most-favored-nation's clause and from an automatic stepped-up escalation clause are rate changes subject to §4 review, then sets forth as its sole reason which "disposes of the principal question presented" this language:

> "It necessarily follows that where, upon the *termination* of a *contract* fixing a rate which was the subject of an initial rate filing with the Commission, a *new contract* between the same parties for the same service as was provided by the terminated contract but at a higher rate, the new rate is a rate change and subject to the provisions of Section 4 of the Act, including the provisions relating to the suspension of the rate. The rate fixed by the *new contract* is not an initial rate which could be changed only by order of the Commission in a proceeding under Section 5." (emphasis supplied)

Except for the imprimatur of this Court which states that it is *law*, I do not at all think it follows, either normally or naturally or *necessarily*, that "upon the *termination* of a contract" a "*new* contract between the same parties" is a rate change. To reason from *existing* contracts to entirely *new* ones after termination is a non sequitur flying in the face of *Mobile*.

[fol. 221] The jurisdiction of the Commission is limited. The Act at one end excludes all that is encompassed within production and gathering and, at the other end, the distribution and sale of it to the local consumer. §1(b). It does not undertake to regulate the "business" of natural gas. "Three things and three things only Congress drew within its own regulatory power delegated by the Act to its agent, the Federal Power Commission. These were: (1) the transportation of natural gas in interstate commerce; (2) its sale in interstate commerce for resale; and (3) natural gas companies engaged in such transportation or sale. * * * ." *FPC* v. *Panhandle Eastern Pipe Line Co.*, 1949, 337 U.S. 498, 503, 69 S.Ct. 1251, 93 L.Ed. 1499.

As these producers are not engaged in transportation, the sole basis for jurisdiction is the *sale* for resale. For "until there is a sale of the natural gas produced by such operations and installations in interstate commerce for resale, they are exempt. In the event of such sale the jurisdiction of the Commission applies but only because of the sale and only to the extent that the Natural Gas Act confers jurisdiction." *Saturn Oil & Gas Co.* v. *FPC*, 10 Cir., 1957, 250 F.2d 61, cert. denied 355 U.S. 956, 78 S.Ct. 542, 2 L.Ed.2d 532.

The *sale* is therefore vital. It is the alpha. Can this Court be right by holding that there is no omega?

This is important especially in view of the cyclonic case by case development under the Act subjecting the owner of a gas well to the awesome obligations of an [fol. 222] orthodox utility despite the obvious " * * * fact that producers are in reality selling gas which they own and are not, in the traditional sense, primarily furnishing a service to the public." *Gulf Oil Corp.* v. *FPC*, 5 Cir., 1958, 255 F.2d 556.

Local distributors cannot get natural gas without transmission lines. Transmission companies cannot obtain the needed astronomical financing unless the entrepreneurs have long-term commitments by distributors to take, and by producers to supply, the gas. Despite the fact that the long-term supply contract must deal with unknown economic factors of a kind which would ordinarily permit a commodity owner to provide an ascertainable but adjust-

able formula to determine price, we have held that such agreed adjustments are rate changes. *Bel Oil Corp.* v. *FPC*, 5 Cir., 1958, 255 F.2d 548. When such increase or "rate changes" are sought, the producer must satisfy the standards prescribed by the Commission to determine whether the rate will be "just and reasonable." §4(a). *Forest Oil Co.* v. *FPC*, 5 Cir., 1959, —— F.2d —— [No. 16844]. To whatever extent any part of the producer's physical equipment serves to effectuate the sale or contain the gas at the point of sale delivery, it becomes a "facility" prohibiting abandonment of any "service" performed thereby. *Continental Oil Co.* v. *FPC*, 5 Cir., 1959, —— F.2d —— [No. 17016].

I do not believe that Congress ever intended that the moment the first cubic centimeter of gas started its irrepressible journey from the bowels of the earth to a Brooklyn burner tip, the gas well owner had committed [fol. 223] himself and his commodity irrevocably either to the purchaser or to the life and death regulatory power of a remote agency.

III.

How was this likelihood to be avoided? Herein lies the explanation for stating the *grant* of power, and hence its *limitation*, in terms of *sale*. Power was not prescribed, as it might have been, in terms of "service," or the "furnishing," or the "supplying" of gas. What was required was a *sale*. This was a term having both an industry-gas-business relevance and a meaning readily understood by Congress. Despite the awkwardness which arises from the *Phillips* retrospective infusion of a general Congressional purpose to regulate sale by producers which the Commission and others for sixteen years thought to be nonexistent, this was as though Congress spelled out this policy: a producer need not sell for resale in interstate commerce; if he makes a sale, he will, for the duration of that sale, be subject to public utility regulation; when that sale is completed, he will then have the opportunity to reassess his position and determine whether he will cease production, sell in intrastate commerce, or make a new sale for resale in interstate commerce. In this way there was some

practical adjustment of the conceptual difficulties involved in subjecting, for the first time in the nation's history, the owner of an exhaustible natural resource to a limited regulation.

[fol. 224] IV.

I would quickly emphasize that I do not think that stating Commission jurisdiction in terms of *sale* inevitably ties jurisdiction to all of the refinements of the law of sales. But if, as this Court concludes—erroneously I think—that Congress used "production" in its everyday sense, *Continental Oil Corp.* v. *FPC*, 5 Cir., 1959, —— F.2d —— [No. 17016], then it is an understatement to say that it certainly must have had in mind the usual connotations of a word and term so well understood and so much used as "sale." In this light, it meant at least a relationship growing out of a contract. "'[S]ale' is a word of precise legal import, both at law and in equity. It means, at all times, a contract between parties, to give and to pass rights of property for money—which the buyer pays or promises to pay the seller for the thing bought and sold." *Williamson* v. *Berry*, 1850, 49 U.S. (8 How.) 495, 544, 12 L.Ed. 1170. *Curtis* v. *O'Leary*, 8 Cir., 1942, 131 F.2d 240; 77 CJS, Sales, §1, at 575 (1952).

There are four main elements to a sale, which is to say a contract, express or implied, of sale: (1) a seller and a buyer; (2) a commodity or service; (3) a price or consideration; and (4) a quantity or time. We know for certain that the Commission cannot order an involuntary sale by a producer to a pipe line, so element (1) is fixed by the parties. The gas producer is unlike the traditional public utility whose holding out binds him to serve all on common terms. Element (2) is confined to gas with the [fol. 225] possible expansion into the area of a service facility. We likewise know for an absolute certainty from *Mobile*, that the Commission cannot prescribe the price. This, too, is left to the parties subject only to a right to review by a hearing and on evidence under §5. That takes care of element (3). On what basis, other than the insupportable one of judicial-administrative necessity can the

Commission prescribe element (4)—that is, the *amount* of the commodity to be sold, whether expressed in terms of total quantity, or quantities for a stated term?

If the *amount* of the commodity, element (4), is thought of in terms of the *quantity* to be delivered, we know for a certainty that the Commission could not order a producer to deliver *more gas* than contracted for. This is so because, whatever else may be the vagaries of the §1(b) production and gathering exclusion, the Commission lacks power to order more production. It could not, for example, compel a producer to rework a sickly well, explore a new horizon, attempt to exploit and tap a new reservoir, much less drill an additional well in order to permit, under state conservation laws, an increase in allowable production and hence deliveries to the pipe line purchaser. This prohibition is so far-reaching that the Commission even lacks the power to order an increase in *transportation* facilities because this would indirectly compel an increase in production. *Panhandle Eastern Pipe Line Co.* v. *FPC*, 3 Cir., 1953, 204 F.2d 675. See also *FPC* v. *Panhandle Eastern Pipe Line Co.*, 1949, 337 U.S. 498, 504-505, 69 S.Ct. 1257, 93 L.Ed. 1499; *Colorado Interstate Gas Co.* v. *FPC*, 1945, 324 U.S. 581, 598, 65 S.Ct. 829, 89 L.Ed. 1206; *FPC* v. *Hope* [fol. 226] *Natural Gas Co.*, 1944, 320 U.S. 591, 612-615, 64 S.Ct. 281, 88 L.Ed. 333; *Phillips Petroleum Co.* v. *Wisconsin*, 1954, 347 U.S. 672, 678, 74 S.Ct. 794, 98 L.Ed. 1035; *Interstate Natural Gas Co.* v. *FPC*, 1947, 331 U.S. 682, 690, 67 S.Ct. 1482, 91 L.Ed. 1742.

Of course if the Commission cannot compel an increase in quantity deliverable under a contract, it may not do so by enlarging the period of *time* during which such deliveries are to be made. The result is the same. The impact is the same. In each case the Commission's order would be ineffectual unless *more* gas were produced, and this is forbidden territory to the Commission.

V.

The Supreme Court makes two things clear. First, private contracts underlie the whole scheme of regulation. Second, such private contracts give way only by deter-

mination of the Commission made after notice, hearing and order. This basic approach pervades all said and done in *Mobile*.

> "The Natural Gas Act * * * recognizes the need for private contracts of varying terms and expressly provides for the filing of such contracts as a part of the rate schedules. * * * By preserving the integrity of contracts, it [the Act] permits the stability of supply arrangements which all agree is essential to the health of the natural gas industry. * * * [T]he Natural Gas Act permits the relations between the parties [fol. 227] to be established initially by contract, the protection of the public interest being afforded by supervision of the individual contracts, which to that end must be filed with the Commission and made public. * * * Admittedly, the Act presumes a capacity in natural gas companies to make rates and contracts and to change them from time to time, but nowhere in the Act, is either power defined. The obvious implication is that, except as specifically limited by the Act, the rate-making powers of natural gas companies were to be no different from those they would possess in the absence of the act." 350 U.S. at 339, 343, 344, 345. See also *United Gas Pipe Line Co.* v. *Memphis Light, Gas and Water Division*, 1958, —— U.S. ——, —— S.Ct. ——, 3 L.Ed.2d 153.

VI.

Both expressed in the briefs of the Commission, and unexpressed but implicit in the Court's opinion, is the apprehension that administrative regulation would be thwarted if parties can prescribe the term (i.e., quantity) of the contract. Assuming that this is for us, rather than the Congress, there are at least three answers. First, we are not here dealing with purported contracts of short and artificial duration. All of the contracts were for the substantial term of 10 years. History has proved that they were genuine and were applied in good faith. Second, the new contracts are likewise of substantial duration. Even more so, because their terms are 20 years. This means that

the "new" contracts are substantially different. They are not, as claimed, for the same service but only at a dif-
[fol. 228] ferent price. One committing himself for two decades instead of 10 years not only to make the sales but to automatically submit himself to extensive Commission regulation during that period has done much more than simply renew a prior engagement. Third, there are now sufficient administrative tools to prevent any abuse of the accepted purpose of the Act through the spurious device of artificially short contract terms, or any other means by which parties attempt to create the appearance of a firm contract, but which is in fact but a paper transaction.

On the latter the Commission may grant a certificate of limited duration. *Sunray Mid-Continent Oil Co.* v. *FPC*, 10 Cir., 1956, 239 F.2d 97, reversed per curiam 353 U.S. 944, 77 S.Ct. 792, 1 L.Ed.2d 794. Conversely, it may grant them without limitation. As a condition to granting the initial Certificate, the Commission can determine whether the proffered contract is genuine and binding for a substantial period of time. If it thinks it not, it may decline the issuance of the Certificate. If, as these cases present, a "new" Certificate is requested for the "new" contract, the Commission can again look at it. Unless the proposed contract subjects the producer to substantial obligations permitting effective regulation for the future, the Commission may decline the Certificate.

All it may not do is force a producer either to produce *more* gas, or sell *more* gas, or sell *more* gas for a longer time. If that is to occur after the expiration of the initial contract, it may be done only upon application of the parties pursuant to a new agreement. The Commission [fol. 229] still has the last check since the condition for the grant of the new Certificate may be alteration in the terms of the agreement.

VII.

Finally, all of this has come about with no hearing, with no opportunity for hearing, and with an absolute refusal of the Commission even to receive the various

applications for the purpose of a hearing. Section 7(e) prescribes a hearing to determine whether a Certificate should be issued and whether, and to what extent, special conditions ought to be imposed on the grant. Section 7(c) requires that a hearing be held. Whether, and to what extent, the initial contracts were genuine, and whether, and to what extent, the "new" contracts were merely a continuation or something substantially different, involved at least questions of judgment which could not be foreclosed peremptorily by slamming the door shut before it was scarcely opened. *Northeastern Gas Transmission Co.* v. *FPC*, 3 Cir., 1952, 195 F.2d 872, cert. denied 344 U.S. 818, —— S.Ct. ——, 97 L.Ed. 637; *Mississippi River Fuel Corp.* v. *FPC*, 3 Cir., 1953, 202 F.2d 899; *Cities Service Gas Co.* v. *FPC*, 10 Cir., 1958, 255 F.2d 860. The Administrative Procedure Act, 5 USCA §§1001-1011, applicable to the Federal Power Commission, *State Corporation Commission of Kansas* v. *FPC*, 8 Cir., 1953, 206 F.2d 690, likewise assures a hearing. *Wong Yang Sung* v. *McGrath*, 1950, 339 U.S. 33, —— S.Ct. ——, 94 L.Ed. 616; *Riss & Co.* v. *United States*, W.D.Mo., 1950, 96 F.Supp. 452, rev'd, 1951, 341 U.S. 907, —— S.Ct. ——, 95 L.Ed. 1345.

[fol. 230] The peremptory nature of the Commission proceedings which we approve is dramatically demonstrated by the Court's reference to the producer's contentions under §7(b). To the argument of the producer that "it engages in no service and renders no service, that it does not propose to abandon any facilities, that it has no facilities subject to the Commission's jurisdiction and hence it is not subject to Section 7(b) of the Act * * *," the Court holds "our decision in *Continental Oil Company* v. *Federal Power Commission*, —— F.2d ——, decided this day, is controlling on this issue." Accepting, for the moment, the correctness of our decision in *Continental Oil Company*, that decision deals at length with minute facts concerning a specific well which was the subject of an extensive hearing. In this proceeding, without hearing, without evidence, without knowing whether, in the sense of *Continental Oil Company*, there is any "facility" by which the service is performed, this Court proceeds to declare that the Commission could take similar action.

The joint effect of these opinions today announced is to destroy the last remnant of the §1(b) production and gathering exclusion. By forcing the owner of a natural resource to continue deliveries until the reservoir is exhausted, and to continue the delivery of gas if some piece of equipment effectuates the sale or its containment at the point of delivery, inevitably means that production is in the hands of the Commission. Congress has posted this as off limits to the Commission. Only Congress may make the change.

I therefore respectfully dissent.

[fol. 231]

IN UNITED STATES COURT OF APPEALS

No. 17040

SUN OIL COMPANY,

versus

FEDERAL POWER COMMISSION.

JUDGMENT—April 17, 1959

This cause came on to be heard on the petition of Sun Oil Company for review of orders of the Federal Power Commission issued on September 12, 1957 and November 8, 1957 in Docket Nos. G-13059 and G-13664, and was argued by counsel;

On Consideration Whereof, It is now here ordered, adjudged and decreed by this Court that the orders of the Commission in this cause be, and the same are hereby, affirmed.

"Brown, Circuit Judge, dissenting."

[fol. 232] Petition for rehearing covering 15 pages filed May 8, 1959, omitted from this print.

It was denied, and nothing more by order June 3, 1959.

[fol. 247]

IN UNITED STATES COURT OF APPEALS

No. 17040

SUN OIL COMPANY,

versus

FEDERAL POWER COMMISSION.

ORDER DENYING REHEARING—June 3, 1959

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

"Brown, Circuit Judge, dissenting."

[fol. 248] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 249]

SUPREME COURT OF THE UNITED STATES

No. 321—October Term, 1959

SUN OIL COMPANY, Petitioner,

vs.

FEDERAL POWER COMMISSION.

ORDER ALLOWING CERTIORARI—November 9, 1959

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.